A COMPLETE

SYSTEM OF PLEADING:

COMPREHENDING THE MOST

APPROVED PRECEDENTS and FORMS of PRACTICE;

CHIEFLY CONSISTING OF

SUCH AS HAVE NEVER BEFORE BEEN PRINTED:

WITH AN

INDEX to the PRINCIPAL WORK,

INCORPORATING AND MAKING IT A CONTINUATION OF

TOWNSHEND's and CORNWALL's TABLES,

TO THE PRESENT TIME;

AS WELL AS AN

INDEX of REFERENCE to all the ANCIENT and MODERN ENTRIES extant.

By JOHN WENTWORTH, Efq.

OF THE INNER TEMPLE, BARRISTER AT LAW.

——————*Ne quæ Studio difpofita fideli*
Intellecta priufquam fint contempta relinquas. LUCRET

VOL. I.

CONTAINING

ABATEMENT.—ACCOUNT.—ASSUMPSIT.

LONDON:

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1797.

TO THE

PROFESSION.

AFTER ſucceſſive interruptions and diſappointments for eighteen months, ſince this work was firſt announced, I am now able to preſent to the Profeſſion the Firſt Volume of my SYSTEM OF PLEADING in Octavo, which, purſuing my favourite plan, contains ABATEMENT, ACCOUNT, and part of ASSUMPSIT; together with the particular ANALYSIS of the Pleas in *Abatement* and of the Action of *Account*, as I intend at the end of every complete Head or Heads, when completed in each ſucceeding volume. Theſe I name the HEADS, or LEADING TITLES; for the Heads of *Proceedings by and againſt Attornies*, &c. are *ſubdiviſions* ariſing out of the General Heads.

THE next Head in the *plan*, namely, ANNUITY, may ſeem to be an exception; but this Head, by reference to the INDEX, will be obſerved to be poſtponed to the Pleadings under the Head *Writ of Annuity—Proceedings in*, in order to connect the old Proceedings, ſuch as *Writ of Annuity*, *Writ of Right*, &c.: Yet ANNUITY will preſerve its former place if it follows *Perſonal* and *Mixed* Actions, and immediately precede *Writs of Right*, &c. which are *Real* Actions, without injury to the ANALYSIS.

IN the Pleas of ABATEMENT, conſidering it a very important Plea, I have thought proper to give the utmoſt variety, notwithſtanding I know there are

 many

many in the Books; I mean the *Ancient Entries* chiefly; for I have not found ſo many in Books of Precedents of *later* date. And if the finiſhed Pleader and experienced Profeſſor ſhould think the Forms too ſimilar or multifarious, ſtill, by narrowly inſpecting them, differences will be diſcovered in *each* both uſeful and inſtructive to the unexperienced Practitioner. Keeping in view the practical uſe of my Work, I have promiſed and do mean to give the greateſt poſſible variety of Precedents and Forms in Pleadings.

IN ACCOUNT I have given few Forms of Pleadings, neceſſarily from the diſuſe of this (though a moſt beneficial) Action: there are, however, more in the preſent volume than in any other Book extant, with complete references to all the *Modern* and *Ancient Entries.*

BUT on the more important Action of ASSUMPSIT, in every day's conſtant uſe, I have beſtowed more pains at leaſt than any other Gentleman in practice in the Profeſſion has leiſure to do. And I wiſh it to be conſidered, that without attending to the diſtinctions between *Aſſumpſit General* and *Special,* I have adopted a mode which I think the moſt *uſeful*; that is, throughout this Action I have claſſed ſuch as I think bear a relation to each other: for inſtance, in the Second Volume, in *Aſſumpſit—Special Contracts,* reſpecting *real* property, *by and againſt Landlord and Tenant,* I have taken care to give the Precedents immediately afterwards on *Contracts relating to Perſonal* property, namely, the *Sale, Aſſignment, Demiſe, &c. of Lands, Houſes, &c.* becauſe they have relation to each other; and ſo in like manner on *Contracts* relating to *Sale, &c. Carriage and Conveyance of Goods, &c.* I have given thoſe *againſt Carriers by Land and Water, &c.* &c. as they reſpect the doctrine of *Bailments,* &c.; an arrange-

arrangement which I have ſtudiouſly adopted, that the Student and Pleader may with his eye immediately catch the *ſubject* and *form* together. In the alphabetical manner in which the majority of Pleaders arrange their Pleadings, I have ſeldom ſeen this analytical order relating to the *ſubject*.

This order, however, may not ſeem to be obſerved in the Diviſion preceding, viz. *Aſſumpſit General:* but I have adopted what I cannot help thinking a more truly uſeful mode there. For inſtance, in *Actions by and againſt particular Perſons*, the moſt general ſubdiviſion of that DIVISION on the right page of the ſheet, I have conſtantly led the eye at the top to the ſubject-matter or *title* (if I may call it ſo) of the PRECEDENT.

The reaſon why I have not critically diſtinguiſhed the Precedents in *Indebitatus Aſſumpſit* from *Aſſumpſit Special*, is, becauſe I do not think it ſo well defined or determined in the Books; but chiefly, becauſe I think my method the moſt natural and eaſy for the Profeſſor and the Student. I will give one inſtance: In my Work, under this Head, it is ſolemnly determined that ASSUMPSIT will not lie for a *legacy*, which if it did, would be *Indebitatus Aſſumpſit*; but *Aſſumpſit Special* will lie on the promiſe by the *Executor*; and yet the Precedents are in the ſame form. I have given two Forms with the leading Caſes, and referred to the very able Arguments of Mr. Juſtice BULLER and my Lord KENYON. The Profeſſion will beſt judge of the uſefulneſs of them.

I HAVE, however, violated the method in one inſtance, namely, *Policies of Aſſurance*, which are *Contracts of Indemnity*, and would more naturally fall under that *ſubdiviſion*; but, never departing from *real* utility for a faſtidi-

ous

ous adherence to ſtrictneſs of method, I have purpoſely claſſed *Bills of Exchange*, *Promiſſory Notes*, and *Policies of Aſſurance, relating to Trade*, together under *Aſſumpſit General*; and in one inſtance, for this reaſon only, have given one Precedent of a *Policy of Aſſurance againſt Fire*, though it is in *Covenant*, and ought to come under that Head; yet in the INDEX the ſame Precedent is to be found under its proper Head *Covenant—on Policies of Aſſurance.*

THERE are ſome Precedents that are not ſtrictly reducible to any of thoſe Heads which I have conſidered moſt uſeful as *ſubdiviſions*, and where I have not been able to claſs the *conſiderations* of the *Contract*, from their anomalous and ſpecial nature. Theſe I have thrown together under that ſort of Head with the title at the top of the page as in *Aſſumpſit General: Ex. gr.* on *Charter Parties* of *Affreightment*, &c. whereas *Covenant* or *Debt* is the ordinary Action. Theſe and other inſtances will preſent themſelves to the Pleader readily.

NEXT follow the *Pleas*, *Replications*, &c. in ASSUMPSIT. The *ſubdiviſions* ariſing out of this Head, namely, *Proceedings by and againſt Particular Perſons*;—*Attornies, by and againſt*, in every ſpecies of Action;—*Baron and Feme*,—*Executors and Adminiſtrators*, &c. &c.;—Forms of *beginning* and *ending* every Declaration or Plea;—the *Judgment* in *Abatement*,—*Account*,—*Aſſumpſit*, and in every other Action; all follow in their proper place and natural order, either in the body of the Work, if they form a diſtinct Precedent, *however minute*, or in the INDEX. For example, for the *beginning* and *ending* of a Plea in ABATEMENT, (which indeed form the Plea itſelf), ſee FORMS. In like manner, for *beginnings* and *endings* of Declarations in ASSUMPSIT in every poſſible way, ſee *Beginnings and Endings of Declarations* under that Head.

Theſe

These and other practical directions I may occasionally give, are to be observed throughout the Work.

THE common Declarations in *Indebitatus Assumpsit*, and the common Counts, are so familiar to every Attorney's Clerk, and so easy to be found in every book of practice, that I had contented myself with referring to them in the INDEX, as they are to be found dispersedly throughout ASSUMPSIT: however, after having put my Work to the press, at the instance of many of my younger friends in the Profession, I have given at the end of ASSUMPSIT one complete Form of *every common Declaration* on all the *common Counts*. And therefore here I cannot too frequently and too earnestly request the Student's attention to the INDEX. Here the difficulty which has been and will be previously regarded as to the facility of turning to Precedents and Forms in the body of the Work, vanishes. Here every Precedent and every Form is so distributed, first by the ANALYSIS, and then by the references FOLLOWING EACH separate Head, as to leave it impossible for a person of the plainest intellect not to find what he wants: All fall into their strictly natural place, and make this hitherto difficult doctrine of Pleading capable of an easy comprehension, as well as prepare the pupil to read his Law Books, especially in this branch of that science—to digest his reading, and improve his faculties.

I HAVE taken all the Books of Practice of Modern Times, with the Reporters, and have chronologically Indexed all the Forms and Precedents whenever they have occurred in them: These, with my own work, form the *Modern Part* of my INDEX. I have next taken the *Modern Entries*, with CORNWALL and TOWNSHEND'S *Tables*, and thrown the antique mass into my own distribution: This forms the INDEX to the *Ancient Entries*.

WITH

With what fidelity and care I have executed this work of labor, I am in the judgement of my superiors in experience and learning. But when the vaſt compaſs of the deſign, the prodigious variety of matter comprehended in it, and above all the difficulty of illuminating ſuch a ſyſtem by a ſtrictly methodical arrangement purely analytical—when all theſe things are contemplated, and they muſt be ſo to form an adequate opinion, I entertain a hope leaning to confidence, that the liberality of the Profeſſion will find more reaſon to be pleaſed that ſo much has been done, than diſappointed that the Work has not attained abſolute perfection. Not to have ſunk under ſo arduous an undertaking is, perhaps, no ordinary merit. I know likewiſe that it is the fate of Induſtry not to be too highly appreciated by Genius, which, while it ſoars above, "like the poet's "directing angel in the ſtorm of battle, vindicates to it- "ſelf the glory of ſucceſs, regardleſs of the more hum- "ble but uſeful machinery by which, in part, its triumphs "have been effected." To lament that this ſpecies of ingratitude is common to all ages, and therefore ſeemingly making part of our nature, is to diſcover more paſſion than philoſophy: Yet for myſelf I will add, (after appealing to, as well as hoping for, the approbation of the Profession) that the ſenſe of my having been unceaſing in my endeavours, as it is the beſt title to the approbation of the Public, ſo it adminiſters to me that ſolid gratification which alone is an ample reward for my profeſſional aſſiduity.

J. WENTWORTH.

Inner Temple, 5th Jan. 1797.



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With INDEX complete to the Heads of ABATEMENT and ACCOUNT.

The INDEX to ASSUMPSIT will follow that Head when completed.

ANALYSIS GENERAL.

CIVIL DIVISION.

PLEADINGS IN ACTIONS PERSONAL.

ACCOUNT	DETINUE
ANNUITY	SCIREFACIAS
ASSUMPSIT	CASE TROVER
COVENANT	REPLEVIN
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IN ACTIONS MIXED.

EJECTMENT QUARE IMPEDIT.

IN ACTIONS REAL.

DOWER PARTITION FORMEDON.

PRACTICAL FORMS.

NOTICES OF ACTION	ISSUES
AFFIDAVITS	CONTINUANCES
RULES, &C.	SUGGESTIONS
WRITS ORIGINAL	INTERROGATORIES
JUDICIAL	POSTEAS
ENTRIES OF WRITS, &C.	SPECIAL VERDICTS
FORMS OF COURTS, &C.	JUDGMENTS.

PROCEEDINGS IN ERROR.

CRIMINAL

CRIMINAL DIVISION.

APPEAL
CERTIORARI
CONVICTIONS
ORDERS OF JUSTICES
INDICTMENTS
INFORMATIONS
HABEAS CORPUS.

PARTLY PARTAKING OF A CIVIL AND PARTLY OF A CRIMINAL NATURE.

MANDAMUS
QUO WARRANTO
PROHIBITION.

ABATEMENT.

AND the said defendant comes and (*a*) defends the wrong and injury, &c. and says, that he the said defendant is, and at the time of exhibiting the said bill of the said plaintiff, and long before, was one of the officers of his majesty's court of the Bench at Westminster, in the county of Middlesex, that is to say, *clerk of the errors* to Sir John Willes knight; and during all that time was, and is duly and personally attending the business of the said office in the same court of the Bench; and that by the usage and custom of that court of the Bench from time whereof the memory of man is not to the contrary, used and approved of in the same court, no officer of that court, whilst he attends his business in the same court, hath been drawn into plea and compelled against his will, nor at any time past hath been used or accustomed, nor ought to be drawn into plea or compelled against his will, to acknowledge any justices or ministers of the said lord the king, or any other secular judges whatsoever, but only before the justices of the lord the king of the Bench aforesaid, upon any pleas, plaints, or demands, which do not touch the person of our lord the king. (pleas of freeholds, felonies, and appeals only excepted); and he the said defendant further saith, that he is drawn into plea in this court here, by the exhibiting the said bill against him as aforesaid, against his will, and against the custom aforesaid; and this, &c. and he brings into court here his writ of our said lord the king, issuing out of the said court of the Bench, and directed to the sheriff of Middlesex, the tenor of which said writ follows in these words, to wit, George the Second, &c. [go through the writ,] indorsed J. Willes; wherefore the said defendant doth not conceive that the said court of our said lord the king here, will or ought to have cognizance of the said plea against him, &c. R. Draper.

[illegible] *lege* of [illegible] *as clerk of the errors* to the chief justice of the [illegible] B. pleaded to [illegible].

(*a*) Qu. if half defence should not be made in such plea. Gilb. C. P. 187. Co. Litt. 127.

AND (*a*) Charles Lewis Moressault, against whom the said [illegible] plaintiff by his bill exhibited complains by the name of [illegible] Mossalt (*b*), *by B. H. his attorney, comes and defends the wrong and injury, &c.* and prays judgment *of* the bill aforesaid, because

in [illegible] and surname [illegible]

(*a*) 5. T. R. 487.

(*b*) A plea of misnomer must be without defence. Vide Bl. Com. 290.; but vide [illegible] contra Com. Dig. tit. Abatement, I. 16.

be

he says that (*a*) *he was baptized* by the name of Charles Lewis, to wit, at, &c. and that he is named and called by the name of C. L. Moressault, and by the said name from the time of his baptism hitherto hath been called and known; without this, that he the said Charles Lewis Moressault now is or ever was called or known by the name of Lewis Mossalt, as by the said bill is above supposed; and this, &c. (*b*) *wherefore* he prays judgment of the said bill, and that the same may be quashed, &c.

ELLIOT BISHOP.

(*a*) This averment seems proper, though the plea would have been good without it.

(*b*) 3. T. R. B. R. 185. Hixon *v.* Binns.

Replication of *nolle prosequi* to the above plea.

And thereupon the said plaintiff (who impleaded the above-named C. L. M. by the name of L. M.) says, that he cannot deny the exception aforesaid, made by the said C. L. M. to the said bill, but confesses the same to be true, and prays leave to exhibit a better bill against him, and it is granted to him, &c. Therefore it is considered that the said plaintiff should take nothing by his said bill so exhibited as aforesaid, but that the said bill may be quashed, and the said plaintiff shall be in mercy for his false claim thereof, and the said defendant shall go thereof without day, &c.

(*b*) Plea, misnomer of defendant's surname in the County Court.

In the County Court of the County of Cambridge. } AND thereupon William Frohock, against whom the said William Kidman hath levied his plaint by the name of William Frog, comes in his proper person and defends the wrong and injury, &c. *and (a) prays judgment of the said plaint, because he* says, that he is named and called by the name of William Frohock, and by the name of William Frohock hath always hitherto been called and known; without this, that he now is, or at the time of levying of the aforesaid plaint of the said plaintiff was, or ever before had been called or known by the name of William Frog, as in and by the said plaint is above supposed; and this he the said William Frohock is ready to verify; wherefore he prays judgment of the plaint aforesaid, and that the same may be quashed, &c.

(*a*) Qu. if this should not be omitted; as there is no objection to the plaint itself, but the matter disclosed in the plea is entirely extrinsic.

The above plea will answer the purpose of abating the suit, but will not entitle the defendant to *costs*, as none of the statutes giving costs extend to this case: but the following *affidavit* is necessary to be annexed.

(*b*) 2. Str. 1218.

V. LAWES.

In the County Court of the County of Cambridge. Between { WILLIAM KIDMAN, Plaintiff, AND WILLIAM FROG, Defendant.

William Frohock, of, &c. impleaded in this suit by the name of William Frog, maketh oath and saith, that the plea hereto annexed is true in substance and matter of fact (*a*).

(Sworn, &c.) WM. FROHOCK.

(*a*) An affidavit of the truth of the plea must always be annexed. 4. & 5. Ann. c. 16. s. 1.

AND

AND W. H. of London, merchant, against whom the said plaintiff hath obtained his original writ in this cause by the name of W. H. late of London, broker, in his own person comes and (a) *defends the wrong and injury*, &c. and prays judgment of the aforesaid writ of the said plaintiff, because he saith that the said W. H. on the day of obtaining the aforesaid original writ and long before was, and from thence hitherto hath been, and still is, a *merchant*; and that he the said defendant, on the said day of obtaining the said original writ, was not, or at any time either before or afterwards hitherto has been, a *broker*, as by the said writ is above supposed; and this, &c. wherefore, inasmuch as the said W. H. is not named of the very mystery of which he really is, according to the form of the (b) statute of additions of surnames and names, in writs in which process of outlawry lies (c), lately made and provided, the said defendant *prays judgment*, and that, &c. S. URLIN.

Plea that defendant is of another addition than that by which he is sued, namely, *merchant* instead of *broker*.

(a) As to the necessity of this half defence, see Com. Dig. tit Abatement, I. 16. Co. L.t. 127. b. (2)

(b) 1. H. 5 c. 5.

(c) Hixon v. Binns, 3. Term Rep. 185. ante.

And the said plaintiff saith, that for the occasion before alledged, the said original writ of the said plaintiff ought not to be quashed, because he saith that the said defendant, on the day of obtaining the said original writ, was, and before then had been a *broker*, as by the said writ is above supposed, to wit, at, &c. aforesaid; and this he prays may be inquired of by the country, &c.

Replication to the above plea, that defendant was a broker as, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he saith that he the said defendant, before and at the time of exhibiting of the bill of the said plaintiff against him the said defendant, was, and from thence hitherto hath been and still is, in the custody of the sheriff of the county of M.; without this, that he the said defendant at the time of exhibiting the said bill was, or at any time since hath been, in the custody of the marshal of the Marshalsea of our said lord the now king, before the king himself; as in and by the said bill is above supposed; and this he is ready to verify; wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea that defendant is in custody of the sheriff and not of the marshal.

AND the said plaintiff says, that he the said defendant, notwithstanding any thing by the said defendant in his said plea alledged, ought to answer to the said bill of the said plaintiff in the court here, because he saith that he the said plaintiff, long before, and at the time of suing out the writ of attachment of privilege hereinafter mentioned, was, and continually since hath been, and yet is, one of the attornies of the court of our lord the king, before the king himself here, to wit, at Westminster aforesaid; and being so an attorney as aforesaid, he the said plaintiff, before the day of exhibiting his said bill against the said defendant, to wit.

Replication (to a plea of *privilege* by an *attorney* of the C. B. in an action brought in B. R.) that plaintiff is an *attorney* of B. R. and as such impleaded defendant in K. B. by attachment of privi-

wit, on the 28th day of November, in the 20th year of the reign of our sovereign lord the now king, according to the liberties and privileges for ſuch attornies of the ſame court from time immemorial uſed and approved in the ſame court, ſued and proſecuted out of the court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter, a certain writ of our ſaid lord the king of attachment of privilege againſt the ſaid defendant, directed to the then ſheriff of Middleſex, by which ſaid writ the ſaid lord the king commanded the then ſheriff of Middleſex aforeſaid, that he ſhould *attach* the ſaid defendant and John Doe, if they might be found in his bailiwick, and ſafely keep them, ſo that he might have their bodies before our ſaid lord the king here, to wit, on, &c. next after, &c. then next following, to anſwer to the ſaid plaintiff, one of the attornies of the court of the ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, according to the liberties and privileges of the ſame court for ſuch attornies, time out of mind uſed and approved of in the ſame court, in a plea of treſpaſs, and alſo to a bill of the ſaid plaintiff againſt the ſaid defendant for 40l. upon promiſes, according to the cuſtom of the ſaid court of the ſaid lord the king, before the king himſelf to be exhibited, and that he ſhould have there then that writ: at which day, before our lord the king at Weſtminſter, came the ſaid plaintiff in his proper perſon, and the ſaid defendant in his proper perſon alſo appeared in the ſame court here, to anſwer to the ſaid plaintiff according to the exigency of the ſaid writ, and the then ſheriff, to wit, J. W. eſquire, and R. A. eſquire, returned to the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, that by virtue of the ſaid writ he had taken the body of the ſaid defendant, and had his body ready before the ſaid lord the king at Weſtminſter at that day, as by the ſaid writ the ſaid ſheriff was required, as by the record thereof, remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, manifeſtly appears: and the ſaid plaintiff further ſaith, that the ſaid writ of attachment of privilege, proſecuted as aforeſaid by the ſaid plaintiff, was proſecuted by him the ſaid plaintiff, as to the ſaid defendant, with intent to implead the ſaid defendant for the cauſes of action in the ſaid declaration above ſpecified, and to cauſe him to appear in the ſaid court here, and upon his ſaid appearance to declare againſt him for the ſeveral cauſes of action above mentioned, according to the courſe and cuſtom of the ſaid court; and the ſaid plaintiff, according to ſuch his intention, afterwards, to wit, in Hilary Term, in the 20th year aforeſaid, declared by bill againſt the ſaid defendant in manner and form aforeſaid; and this, &c.; (*a*) wherefore, &c. and that the ſaid defendant may anſwer to the ſaid bill of the ſaid plaintiff, &c.

(*a*) A replication to ſuch a plea ſhould conclude to the *record* and not to the country, for no one can be an attorney but by the act of the court, which muſt be entered on record, and the court will not ſuffer a jury to inquire into their own act. 1. Stra. 76. W. Davy.

AND

AND the said defendant in his own person comes and defends the wrong and injury (*a*) (*b*) and says, that this court here ought not to take, nor will take, cognizance of the plea aforesaid, because he saith, that as well from royal dignity as from ancient custom in consequence thereof, from time immemorial used and approved of within this kingdom, "the Barons of the Exchequer, the clerk "residing there, and all others, officers and ministers officiating "there, whether of the clergy or others, belonging to the king's "court, who should assist there by command," (*c*) ought not to be impleaded elsewhere than in the Exchequer "(*d*) so long as the "Exchequer should be open:" and the said defendant further saith, that he the said defendant long before, and at the time of suing forth the original writ of the said plaintiff against the said defendant, was, and from thence hitherto hath been, and still is, one of the officers and ministers residing and officiating in the said court of Exchequer, to wit, one of the *sworn clerks in the lord treasurer's remembrancer's office* there, and as such entitled to the privilege aforesaid, to wit, at Westminster aforesaid; and this he is ready to verify, "and he brings here into court the writ of our "lord the now king," (*e*) issuing out of the court of Exchequer aforesaid, closed in these words, to wit, George the Third [here set out the whole of the writ of privilege verbatim]; which said writ being read and heard, the said defendant saith, that the said court here ought not to take, nor will take, cognizance of the said plea against him in this court here, &c. (*f*). J. MINGAY.

Plea to the *jurisdiction* of the court of C. B. of privilege by a *sworn clerk in the lord treasurer's remembrancer's office in the Exchequer* sued here.

(*a*) Vide Bl. Com. 3. vol. 298. Co. Lit. 127. Salk. 217. Ld. Raym. 282. with respect to making full defence in the pleas to the jurisdiction of the court.

(*b*) For the mode of imparling when the defendant means to plead his privilege, see Hard. 365. pl. 2. 1. Lutw. 43. Morg V. M 230. and 9. E. 4. 53. pl. 18. Bro Priv. 25.

(*c*) Vide Barrington's case, Hard. 164. and note (*d*).

(*d*) Should it not appear that the Exchequer was open at the time when this plea was pleaded?

(*e*) For the reason, vide 6. Mod. 305. Morg. V. M. 24

(*f*) The privilege may be allowed on producing the Liber Rubricus of the Exchequer, 10. Jones, 288. or by supersedeas, Salk. 546. For the legal privilege of the Exchequer, vide Hard. 365. 1. Lutw. 46. 6. Mod. 305. Salk. 511. 550. 31. H. 6. 10. 22. H. 6. 19. 6 Vin. Abr. 17th vol. 515. Morg. V. M. 24.

Mr BULLER's *Opinion* on this plea. If the facts stated in the plea are true, I think the plea is good in form and substance, and the plaintiff cannot proceed further in this action; therefore he should enter judgment by *quasfetur billa*, which he may do without costs.

Mr. DAVENPORT's *Opinion.* I observe that the plea is of the same Term with the declaration, so that there has been no imparlance either general or special, and in such case I apprehend that this plea in abatement, with a *profert* of the writ of privilege, is a good plea to abate the suit, and that no replication or demurrer will prevail against it if the facts be true.

Mr. RUNNINGTON's *Opinion.* Though I am satisfied in my own mind, that the privilege which defendant has pleaded ought not to be allowed and perhaps on serious argument would not be admitted; yet I think it will be most prudent in the plaintiff to admit this plea, and enter up the judgment by *quasfetur*. There are two cases, one in the time of Eliz. Sav. 20. the other in the time of James, Hob. 177. which seem strongly to support the privilege contended for, though there are other cases which seem strongly to deny it on similar points.

On these Opinions judgment for the defendant was entered as follows afterwards.

Judgment for defendant *quassetur billa* to the last plea. See Judgments in Abatement, tit. Judgments.

And hereupon the said plaintiff saith, that he cannot deny but that the plea of the said defendant, in manner and form aforesaid above pleaded, and the matters therein contained, are true, wherefore he will not farther prosecute his said suit there against the said defendant. Therefore it is considered that the said plaintiff take nothing by his said writ, and that the said writ, for the cause aforesaid, be quashed, and held for nought; and that the said plaintiff be in mercy for his false claim, and that the said defendant go thereof without day, &c.

Plea in abatement, that defendant is not an attorney, as alledged in the bill.

AND one William Lee, gentleman, against whom the said plaintiff hath exhibited his bill as one of the attornies of this court here, in his proper person comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he says that the said defendant is not, nor ever was, one of the attornies of the court of our lord the king, before the king himself, at Westminster aforesaid, as he the said plaintiff hath above supposed; and this he the said defendant is ready to verify; wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

W. WHITAKER.

Replication (*a*) in *assumpsit* to a plea of *coverture* in abatement, *viz.* that defendant is not covert, and issue thereon.

Award of inquiry conditional.

Venire.

AND the said plaintiff as to the said plea of the said Mary, by her above pleaded, says that the said original writ of him the said plaintiff in this action ought not to be quashed, because he says that the said Mary was not, nor is, *covert* of the said John Potter, in the said plea of the said Mary mentioned, in manner and form as the said Mary hath above in that plea alledged, and this he the said plaintiff prays may be inquired of by the country; and the said Mary doth the like, &c. Therefore, as well to try the said issue above joined between the parties, as to inquire of and assess the damages of the said plaintiff by reason of the non-performance of the said several *promises* and undertakings in the said declaration mentioned, in case the said issue shall be found for the said plaintiff, the sheriff is commanded that he cause to come here in fifteen days from the day of Saint Martin, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. as well, &c. V. LAWES.

(*a*) See Pleas of Coverture, post.

Plea that defendants sued as man and wife, *ne unques accouple in loyal matrimonie.*

GRAY and NORTON, *sued by the names of* GRAY and WIFE, *at suit of* KETHER.

AND the said John Gray and Ann Norton, against whom the said plaintiff hath brought his original writ by the name of John Gray and Ann his wife, by their attorney, come and defend the wrong and injury, &c. and pray judgment of the original writ of the said plaintiff, because they say that the said J. G. and A. N. *were never joined together in lawful matrimony*, in manner and form as the said plaintiff hath above in and by his said writ supposed, and this they are ready to verify; wherefore they pray judgment of the

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the ſaid writ ſo proſecuted againſt them by the name of J. G. and A. his wife, and that the ſaid writ may be quaſhed, &c.

R. Comyns.

And the ſaid J. Kether ſays, that the ſaid original writ of him the ſaid plaintiff, for the reaſons above alledged, ought not to be quaſhed, becauſe he ſays that the ſaid A. N. is, and at the time of his bringing his original writ aforeſaid was the wife of the ſaid J. G. as by the ſaid writ is above ſuppoſed; and this he prays may be inquired of by the country, &c. Replication thereto.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and ſaith that the ſaid plaintiff is an alien born, to wit, at C. under the ligeance of the French king, an adverſary of our lord the now king, and of father and mother adhering to his ſaid adverſary; and the plaintiff entered into this kingdom of Great Britain, without the ſafe-conduct of the ſaid lord the now king; and this he the ſaid defendant is ready to verify, where, when, and as the court ſhall award; wherefore he prays judgment if the ſaid plaintiff ought to be anſwered to his ſaid bill, &c. Plea *to the perſon*, that plaintiff is an *alien* enemy born.

R. Draper.

Vide Morg. V. M. 38. 2. Stra. 1082. Co. Lit 129. Salk. 46. Annex affidavit of place where plaintiff was born, and that he was not naturalized, to defendant's knowledge.

And the ſaid plaintiff, notwithſtanding anything above pleaded by the ſaid defendant, ſays, that he the ſaid plaintiff ought to be anſwered to his ſaid bill, becauſe he ſaith that long before a war was proclaimed between the ſaid French king and our ſaid lord the now king, and in time of peace between the ſaid kings, to wit, on the 1ſt July 1727, the ſaid plaintiff was and reſided in this kingdom of Great Britain, to wit, at Weſtminſter aforeſaid, and continually ever ſince, and at the time of the making of the ſaid promiſſory note, and the ſaid ſeveral promiſes in his ſaid declaration mentioned, and at the time of exhibiting his ſaid bill, remained and reſided, and now doth remain and reſide, in this kingdom of Great Britain, by the licence and under the protection of our ſaid lord the now king of Great Britain, to wit, at Weſtminſter aforeſaid; and this, &c.; wherefore, &c. and that the ſaid defendant may anſwer his bill and declaration, &c. Replication to the above plea, that plaintiff reſided in theſe kingdoms in time of peace, and ſtill reſides under the protection and licence of our lord the king.

S. S. Smythe.

Vide Bac. Abr. 84. Morg. Dig. 38. &c. Lord Raym. 283, 853. 2. Stra. 1082. Salk. 46. Fareſley, 156.

AND the ſaid defendant, in his own proper perſon, comes and prays oyer of the original writ of the ſaid plaintiff, and it is read to him in theſe words, that is to ſay, George the Third, &c. [ſet out the writ] which being read and heard, he the ſaid defendant Plea in abatement *of the writ*, that there is no return thereon, and no pledges found.

fendant prays judgment of that writ, because he saith that the said writ hath *no return* thereupon, and that it *does not appear that the plaintiff hath found any pledges* to prosecute his said writ, as by law he ought to have done; and this he is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, &c.

Plea in abatement of an action of debt on bond in the B R. that a (a) *prior action is depending* for the same cause in B. R.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and says that he ought not to be compelled to answer to the said bill, because he says that before the exhibiting of the bill in this present action, to wit, in Michaelmas Term, in the 25th year of the reign of our lord the now king, in the court of our said lord the now king, before the king himself (the said court then and still being held at Westminster, in the said county of Middlesex), the said plaintiff impleaded the said ~~defendant, and exhibited~~ his certain bill against him in a plea ~~of debt on demand, of and upon the same identical writing~~ obligatory, in the said declaration in this present su~~it mentioned, as by~~ the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself, to wit, at Westminster aforesaid, more fully appears: and the said defendant further saith, that the parties in this and the said former suit are the same Thomas Martin, plaintiff, and the said John Bingley, defendant, and not other or different persons; and that the said former suit so brought and prosecuted against him the said defendant, by the said plaintiff as aforesaid, is still depending in the said court of our said lord the king, before the king himself, and not discontinued, tried, or determined; and this the said defendant is ready to verify; wherefore he prays judgment, if he ought to be compelled to answer to the said bill, &c. T. DAVENPORT.

Affidavit of truth, &c. annexed. See *Practical Forms.*

The defendant is certainly competent until the *actual abatement* or discontinuance of the former suit, to plead the pendency of it, in abatement of this; "but "the effect of such plea may be pre"vented by the carrying in of the roll of "the judgment of such abatement or "discontinuance, and that at any time." As defendant here only wants time, I am not aware of any plea so likely to obtain it, as a plea upon the fact of the former suit depending. *Sed vide* 1. Ld. Raym. 274. 2. Ld. Raym. 1014. Salk. 323.

V. LAWES.

(a) Sayer's Rep. 216.

Plea of *variance* between original writ and declaration.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and craves oyer of the original writ aforesaid, and it is read to him in these words, to wit: George the Third, &c. [set out the writ *verbatim*] which being read and heard, the said defendant prays judgment of the said writ, and pleads that there is a variance between the said writ and declaration thereupon, in this particular, that is to say, for that in and by the said writ it is said, Whereas the said Thomas, *on the 1st day of October*, A D. 1771, at, &c. was indebted to the said plaintiff in the

the sum of 40l. of lawful, &c. for divers works and labours of the said plaintiff and his servants, by him the said plaintiff and his servants, with horses, waggons, carts, and other carriages of the said plaintiff, for the said defendant, at the special instance, &c. of the said defendant, before that time done and performed; and in the said declaration aforesaid, founded upon the said writ, it is complained, That whereas the said defendant, *on the 1st day of November*, on, &c. was indebted, &c. Therefore in that there is manifest variance in this, to wit, that the writ aforesaid sets forth as follows, that is to say, &c. &c. and in the declaration aforesaid, founded on the said writ, it is complained and alledged as follows, to wit, &c. &c. in that there is a manifest variance. Therefore, because there is a manifest variance between the original writ aforesaid and the said declaration, in the particulars aforesaid, he the said defendant prays judgment of the writ aforesaid, and that the same may be quashed, &c. J. MORGAN.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and prays oyer of the original writ of the said plaintiff, and it is read to him in these words, to wit, George the Third, &c. [set out the writ *verbatim*] which being read and heard, the said defendant prays judgment of the writ aforesaid, "and also of the declaration of the said plaintiff" against the said defendant, thereon founded, because he says that there is a variance between the writ aforesaid and the declaration of the said plaintiff against the said defendant, founded on the writ aforesaid, in this, to wit, that in and by the said writ the said defendant is called by the name and addition of J. S. late of London, *merchant*, and in the declaration aforesaid, founded on the said writ, by the name and addition of J. S. late of London, *mercer*; wherefore, inasmuch as there is such variance between the writ aforesaid, and the declaration of the said plaintiff thereon founded against the said defendant, in the addition of the said defendant, he the said defendant prays judgment "of the writ and declaration "aforesaid;" (*a*) and that the same may be quashed, &c.

Another, of *variance* between the writ and count in the addition. See the notes infra.

(*a*) 2 Mod. Intran. prays judgment of the narration, though at the beginning it prays judgment of the writ, 2 Instr. Cl. 44. Hard. l. 9. c. 5. p. 152. b of variance between the writ and count, quotes Bracton, which vide in his cap. &c. execut. con. Bro. p. 415, Item cadit breve ut si quis per narrationem in judicio factum recesserit de brevi suo, &c. Per Gilb. Com. Pl. 52. on variance between the writ and the count, the writ may be abated. So Finch 364. 77. tit. Variance, both shall abate, he quotes several cases. Plaintiff cannot demur, because he would not then maintain his writ, Gilb. 259. Salk. 218. and Gilb. 51, &c. As to time of pleading pleas of variance in abatement, this plea may be pleaded after the expiration of four days.

BAYLEY & UXOR, *at suit of* VINCENT. } AND the said Thomas, and she who in this declaration is named Hannah, otherwise Johannah, in their own proper person come and plead that she was baptized by the name of Ann and

Plea of misnomer in the christian name of wife pleaded to an action against husband and

and not Hannah, otherwife Johannah, and by the name of Ann hath always been called and known, and not by the name of Hannah, otherwife Johannah, as by the faid declaration is above fuppofed; and this they are ready to verify; wherefore they pray judgment, and that the faid bill may be quafhed, &c.

The above plea was held good, vide E. 11. c. 5. f. 17. but it is added, "The hufband muft likewife anfwer for himfelf."

[illegible] intended ? doubtless. Vid. [illegible]

Abatement to the writ in dower, that deceafed hufband was a knight.

AND the aforefaid tenant faith, that the faid J. T. the late hufband, &c. long before he clofed his laft day was made a knight, and this, &c. wherefore he prays judgment of the writ aforefaid, and the demandant doth not deny this; wherefore let the writ be quafhed, &c.

The *jurifdiction* of the feffions for the Tower hamlets pleaded in abatement of an indictment at the Middlefex feffions.

AND the faid William Whitrow, in his own proper perfon, comes, and having heard the faid indictment read, fays that the court of our lord the king here ought not to take cognizance of the trefpafs and affault in the faid indictment above fpecified, becaufe, protefting that he is not guilty of any trefpafs and affault upon the faid Jacob Collier, he faith that the faid trefpafs and affault above fuppofed againft him (if any fuch there were) were committed within the precincts and liberties of the Tower of London of our faid lord the king, that is to fay, at the precinct of the Old Artillery Ground, within the liberties, boundaries, privileges, jurifdictions, and governments of the fortrefs and palace of the Tower of London, and within the limits and boundaries fet down, mentioned, and defcribed in the fchedule annexed to the hereinafter in part recited letters patent, and not elfewhere, out of the faid precinct and liberties of the Tower aforefaid; and that James the Second, late king of England, by his letters patent under the great feal of England, bearing date at Weftminfter, the tenth day of June, in the third year of his reign, reciting (amongft other things) that feveral differences had then lately arifen between the officers of his late majefty of his fortrefs and palace of his Tower of London, and the officers of his faid late majefty's city of London and county of Middlefex, touching the liberties and jurifdictions of his faid majefty's faid Tower of London which had occafioned the breach of the peace, and divers other inconveniencies were likely to enfue thereupon in time to come, unlefs the fame fhould be prevented by his faid majefty's royal authority; and further reciting that by his faid majefty's order in council, by him iffued in that behalf, bearing date the twelfth day of May then laft paft, his faid majefty had directed an enquiry to be made into the ancient boundaries, liberties, and jurifdictions of his faid Tower of London; and that finding upon due examination had thereof, that the fame had been fet out and afcertained by feveral of the court leet of his faid majefty's faid Tower of London and jurifdiction of his faid Tower aforefaid, being antient perfons, who

had

had for a great number of years been inhabitants within the said liberty, and other persons of good judgment and credit authorized and appointed by George lord Dartmouth, master general of his said majesty's ordnance, and chief governor of his said majesty's said Tower of London, to view and take the admeasurements, and truly set out the abuttings and boundaries of the said liberty, and every place thereunto belonging; and that being satisfied upon the whole matter, that the boundaries and jurisdictions of the said liberty were in such manner as is mentioned in the schedule thereto annexed, his said majesty did, for the better ascertaining the true boundaries, liberties, and jurisdictions of his said Tower, and for preventing of all further differences between his said officers of his said Tower of London, and the officers of his said city of London and county of Middlesex, concerning the premises, and that justice might for ever thereafter be duly administered to his loving subjects, as well within his said liberty as within his said city and county aforesaid respectively, by the proper and respective officers to whom the execution thereof did of right appertain, of his special grace and certain knowledge and mere motion, did, by the said letters patent, for himself, his heirs and successors, will, grant, confirm, constitute, declare, and appoint (amongst other things therein mentioned), that all and every the place and places, limit and limits in the said schedule thereunto annexed particularly mentioned and described, and every part and parcel of them and every of them, should be for ever thereafter, called, reputed, and taken to be, the liberties of the Tower of London aforesaid, and that the same should be for ever exempted and free from the government and correction of the mayor, aldermen, and justices of the peace, coroners of or within the city of London, or the liberties thereof, and of and from the government and correction of the justices of the peace and coroners of and within the county of Middlesex, and from all power and authority, privilege and jurisdiction of them or either of them; and that the said several places and limits in the schedule thereunto annexed particularly mentioned, described, and set down, and every part and parcel of them, and every of them, by what name or names soever they or any of them then were or theretofore had been called or known, should be for ever thereafter annexed, united, and consolidated into the said liberty of the Tower of London aforesaid, and be called, reputed, deemed, taken, or known to be parts, parcels, and members of and within the limits, boundaries, liberties, privileges, jurisdictions, and governments of his fortress and palace of his said Tower of London, any law, custom, usage, prescription, or other matter or thing whatsoever to the contrary notwithstanding; and his said late majesty did thereby for himself, his heirs and successors, grant, ordain, and declare, that the then chief governor of the Tower of London, and every chief governor thereof for the time being, from time to time, and at all times for ever, by himself or his sufficient deputy or deputies, should have the return and execution of all writs, process, precepts, and mandates of his said majesty, his heirs and

Reciting letters patent, and that the liberty of the Tower should be for ever exempt, &c.

and successors, within the said limits, precincts, places, and liberties, and should have power to administer and give to such deputy or deputies the usual oath for the due execution of such office and trust: and his late majesty's further will and pleasure was, and he did thereby further for himself, his heirs and successors, ordain, constitute, and declare, that from time to time, and at all times for ever thereafter, there should be a sessions of the peace holden within the said several places, limits, precincts, or liberty, by justices of the peace to be from time to time assigned and appointed by his said majesty, his heirs and successors, which said justices of the peace, to be assigned as aforesaid, should hold sessions of the peace at the four usual times in every year, by the statute in that behalf limited and directed, in such convenient place within the precincts and liberty aforesaid, as the chief governor of the said Tower of London, then and for the time being, should for that purpose assign and appoint; and should have full power and authority to do and execute all and every such matters and things which to the office of a justice of the peace did belong or appertain: and his said late majesty did thereby for himself, his heirs and successors, strictly enjoin and forbid, as well the sheriffs and justices of the peace and coroners, as also all other the officers and ministers of his said majesty, his heirs and successors, within his said city of London and county of Middlesex, or either of them, and all other the bailiffs, officers, and ministers of any of his courts whatsoever, that they or any of them should not intermit or intermeddle in the said precincts or liberties of his Tower of London, or any of them: and his said late majesty did by the said letters patent, for himself, his heirs and successors, grant and declare that those his said letters patent, or the inrolment thereof, should be in all things firm, valid, and effectual in the law, according to the true intent and meaning thereof, notwithstanding the not taking or finding any inquisitions of office or inquisition of office, touching or relating to the premises or any part thereof, and notwithstanding the mis reciting, or not truly and perfectly reciting or describing any of the ancient boundaries, liberties, limits, or jurisdictions of his said Tower of London, belonging or of right appertaining, or of any of the limits and places thereby made and declared to be parcel of his said liberty, or in the schedule thereto annexed mentioned, or any part of, or any other imperfection or defect in the said letters patent contained, or any statute, act, usage, prescription, custom, provision, or restriction, or any other matter, cause, or thing whatsoever to the contrary thereof in any wise notwithstanding: and the said William Whitrow says, that the schedule to the said letters patent annexed, as far as concerns and relates to the abuttings and boundaries of the precinct of the Old Artillery Ground, within the liberty of the Tower of London, is in the words following, that is to say, &c. [set forth the schedule] as in and by the said letters patent, and the said schedule thereunto annexed, doth more fully appear; and this he the said William Whitrow is ready wherefore he prays judgment whether

Sessions of the peace to be holden four times in the year with a non intromittant clause.

ther the court of our said lord the king here ought or will further proceed against him, and that he may be dismissed, and not farther aggrieved, &c.; and the said William Whitrow brings into court here the letters patent aforesaid, and the schedule aforesaid, which respectively testify the liberties, privileges, limits, and exemptions respectively aforesaid. [See Proceedings before Justices.]

Plea in abatement to an action at the suit of an *executor*, that testator constituted plaintiff and another executors who is not named.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said writ, because he says that the said G. C. (the testator) in his life-time, constituted him, the said plaintiff, and one J. B. to be executors of his last will and testament, and afterwards died, and after whose death the said J. B. as the executor of the last will and testament of the said G. C. administered divers goods and chattels which were of the said G. C. at the time of his death, to wit, at Westminster aforesaid, which said J. B. at the time of the suing out the original writ of the said plaintiff, was, and still is living, to wit, at &c. aforesaid; and this, &c. wherefore for that the said J. B. is not named in the writ aforesaid, the said defendant prays judgment, &c. and that, &c.

See Executors, &c. vide 5th Burr. 2613. This matter must be pleaded in abatement, and cannot be given in evidence.

Powers and Cocke, 1. Ld. Raym. 63. as to the conclusion.

Plea in abatement by defendant sued as *executor*, that testator appointed defendant and another (who is not named a defendant) executors.

AND the said John Smallman, in his own person, comes and defends the wrong and injury, &c. and prays judgment of the said bill, because he says that the said David (the testator) in his life-time, to wit, on the sixth of February, A. D. 1745, at, &c. aforesaid, made his last will and testament, and thereby constituted and appointed the said defendant and William Jones executors thereof, and afterwards, to wit, on the same, &c. at, &c. the said defendant and William Jones duly proved the said will, and took upon themselves the burthen of the execution thereof; and the said defendant brings into court here the letters testamentary of the said David, which fully prove that the said defendant and William Jones are the executors of that will, (*a*) and have the administration thereof, &c.; and the said defendant further says, that the said William Jones is still living, to wit, at, &c. aforesaid; and this, &c.: wherefore, inasmuch as the said William Jones is not named a defendant in the said bill, the said defendant prays judgment, &c. and that, &c.

B. Lucas.

Ld. Raym. 63.
2. Bac. Abr. 396. Godolphin, 134. Wentw. Off. of Executors, 95. 1. Lev. 161. Sid. 242.

(*a*) Must aver that the other administered, 1. Lev. 161.

AND

Plea in abatement, that plaintiffs are not executors.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and craves oyer of the letters teſtamentary of the ſaid Margaret here brought into court, which are read to him in theſe words, that is to ſay, By the tenor, &c. (granting adminiſtration to Margaret Reynolds and Ann Edwards, executrixes); which being read and heard, the ſaid defendant prays judgment of the ſaid bill, becauſe he ſaith that the ſaid Benjamin Reynolds and Theophilus Edwards are not nor ever were executors, nor is nor ever was either of them an executor of the laſt will and teſtament of the ſaid M. R.; and this, &c.: wherefore, inaſmuch as the ſaid B. R. and T. E. are above named and called executors of the laſt will and teſtament of the ſaid Margaret, the ſaid defendant prays judgment, &c. and that, &c. [1. Ld. Raym. 638.]

Plea by defendant ſued as executor, that the teſtator appointed an executor who renounced; and that adminiſtration during the minority of an infant was granted to defendant.

AND the ſaid Charles Welſh, againſt whom the ſaid John Aſhmore hath exhibited his bill by the name and deſcription of Charles Welſh, executor of the laſt will and teſtament of Anderſon Aſhmore, deceaſed, by Jacob Anderſon his attorney, comes and ſays, that the ſaid Anderſon in his life-time, to wit, on the 5th day of December 1745, at Roſs aforeſaid, duly made his laſt will and teſtament in writing, and thereby conſtituted John Jones ſole executor thereof, and afterwards, to wit, on the 1ſt day of March, in the year aforeſaid, at Roſs aforeſaid, died without revoking or altering his will, and after his death, to wit, on the 18th day of March 1745, aforeſaid, at, &c. aforeſaid, the ſaid John Jones duly renounced the ſaid executorſhip; and thereupon afterwards, and long before the exhibiting of the ſaid bill of the ſaid plaintiff, to wit, on the ſame, &c. laſt aforeſaid, at, &c. aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits which were of the ſaid Anderſon at the time of his death, with the will of the ſaid Anderſon annexed, during the minority of Paul Aſhmore, by Edward Wynne, doctor of laws, vicar-general and official principal of the right reverend father in God, Henry, by divine permiſſion lord biſhop of Hereford, lawfully conſtituted, to whom the commiſſion of the adminiſtration aforeſaid did of right belong, was duly committed to the ſaid defendant, and the ſaid defendant brings here into court the letters of adminiſtration of the aforeſaid official, which give full evidence hereof, and are dated the day and year laſt aforeſaid, and the ſame are ſtill in full force; and the ſaid Paul Aſhmore ſtill continues in his minority, to wit, under the age of twenty-one years, in which caſe the defendant ought to be ſued as adminiſtrator of the goods and chattels which were of the ſaid Anderſon at the time of his death, with the will of the ſaid Anderſon annexed, during the minority of the ſaid Paul Aſhmore, and not as executor of the laſt will and teſtament of the ſaid Anderſon; and this, &c. wherefore he prays judgment, &c. and that the ſame, &c.

AND

AND the ſaid Richard and Elizabeth, by Richard Pinlott their attorney, come and defend the wrong and injury, &c. and pray judgment of the ſaid bill, becauſe they ſay that the ſaid John Stacy, on the 20th day of January 1754, at Weſtminſter aforeſaid, died inteſtate, after whoſe death, to wit, on the 4th day of February 1754 aforeſaid, at, &c. aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits which were of the ſaid John Stacy at the time of his death, by John Betteſworth, doctor of laws, in and throughout the whole archdeaconry of London, official, lawfully conſtituted, was in due form of law committed to the ſaid Elizabeth; *without this, that* the ſaid Elizabeth is or ever was executrix of the ſaid John, as is by the ſaid bill above ſuppoſed; and this, &c. wherefore, &c. and that the ſame, &c. J. YATES.

Plea in abatement by huſband and wife, *ſued as executrix*, that *adminiſtration* was granted to the *defendant Elizabeth*.

Traverſe.

In the County Court.
BRIDGES
at ſuit of
PURNOCK.

AND the ſaid defendant now here pleads and giveth the court here to underſtand and be informed, that ſince the laſt continuance of the aforeſaid plea, to wit, ſince the 20th day of January now laſt paſt, till which day the ſaid plea was laſt continued, and before this day, to wit, on the 20th day of April, the ſaid plaintiff was and now is excommunicated, and he ſhews to the court here the letters patent of the right reverend father in God, Iſaac, by divine permiſſion biſhop of Worceſter, which teſtify the ſame in theſe words following, that is to ſay, to all and ſingular, &c. [ſet out the letters of ſignificavit to the end, *verbatim*]; whereupon the ſaid defendant prays that the plaint aforeſaid may be from henceforth ſtaid without day until, and ſo forth; with this, that the ſaid defendant will verify that the ſaid plaintiff mentioned in the plaint aforeſaid, as plaintiff in the ſaid plaint, and the ſaid plaintiff mentioned in the ſaid letters patent of the ſaid biſhop, are one and the ſame perſon, and not different perſons, &c.

Excommunication of plaintiff pleaded (*after the laſt continuance*) in the county court.

EATON and Another
at the ſuit of
The ATTORNEY GENERAL.

AND now at this day, that is to ſay, on Friday next after eight days of Saint Hilary, in this ſame Term, until which day the plea aforeſaid was laſt continued, comes the ſaid John by his attorney aforeſaid, and proteſting that the plea already pleaded by him the ſaid John and the aforeſaid Edward Nicholas, in manner and form aforeſaid pleaded, and the matters therein contained, are ſufficient in law to bar the ſaid now attorney general from proſecuting the ſaid information; for plea be the ſaid John ſays, that the ſaid Edward Nicholas, in the ſaid information named, and againſt whom, together with the ſaid John, information is laid as aforeſaid, after the laſt continuance of the ſaid plea, that is to ſay, on the 20th day of January, A. D. 1784, at, &c. aforeſaid, died; and this he the ſaid John is ready to verify; wherefore he prays judgment, and that the ſaid information may be quaſhed, &c. and he the ſaid John diſmiſſed the ſaid court here, entirely diſcharged therefrom.

Plea to an information in the Exchequer, that one of the defendants is dead *ſince the laſt continuance*.

AND

Plea in abatement, that the bill is filed against defendant as a common person, and not as *clerk to the chief clerk.*

AND the said William Hopkins, one of the clerks of Edward Ventris, esq. chief clerk of our sovereign lord the king before the king himself, comes in his proper person and prays judgment of the said bill, because he says that all such clerks of the said chief clerk have, time out of mind, been sued and impleaded, and ought only to be sued and impleaded in all pleas, at the suit of a subject in the said court, before the said king and his predecessors kings and queens of this realm, by bill to be there filed against them as present in the said court; and the said William further saith, that he now is, and at the time of exhibiting the said bill and long before was, one of the said chief clerks; and this he is ready to verify; wherefore, and for that the said Ann Blagrave hath exhibited her said bill in the said court against the said William, as an attorney of the said court, and not as one of the clerks of the said chief clerk, the said William prays judgment of the same, and that the said bill may be quashed, &c.

Plea in abatement by two defendants in trover of a misnomer of one.

AND the said Thomas Fellows, and also William Myers, against whom and the said Thomas Fellows the said Levy Abraham hath exhibited his bill by the names of Thomas Fellows and Richard Myers, come in their proper person and defend the force and injury, &c. and pray judgment of the said bill, because he the said William Myers was baptized by the name of William, to wit, at London aforesaid, in the parish and ward aforesaid, and from his baptism hitherto has been always known and named by that name; without this, that he the said William now is or ever was known or named by the name of Richard, as by the said bill is above supposed; and this they are ready to verify; wherefore they pray judgment of the said bill, and that the said bill may be quashed, &c.

This plea as now settled by me is bad in law. It can legally be pleaded by Myers *only*, but then the bill would have been quashed only as to him, and the plaintiff might have gone on against Fellows.

Plea that another joined in the promise, and was not made by defendant

AND the said Peter Thompson, by William Loveridge his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the bill aforesaid, and that the same may be quashed, because he says that the said several supposed promises and undertakings in the said bill mentioned, if any such were made, were and each of them was made, as well by the said John Bockett, as the said P. T. *and not by the said P. T. alone*, which said John Bockett is still living, to wit, at London aforesaid, in the parish and ward aforesaid; and this the said P. T. is ready to verify; wherefore, inasmuch as the said John Bockett is not named in the said bill, the said P. T. prays judgment thereof, and that the same may be quashed, &c.

AND

And the said William, as to the said plea of the said P. T. by him above pleaded, says, that for any thing therein alledged, the said bill of the said William ought not to be quashed, because he says that the said several promises and undertakings in the said declaration mentioned were, and each of them was, made by the said P.T. alone, in manner and form as the said William hath above thereof complained against him; and this he prays may be inquired of by the country, and the said P. T. doth the like. Therefore, &c.

Replication thereto that defendant alone promised.

THO. BARROW.

This replication was withdrawn, the plaintiff's attorney finding on examination, that he could not prove a special promise by defendant to pay the money, *only that it should be paid*. Vide the case reported, Espinasse [illegible] at Ni. Pri. 64.

AND the said Michael, by Edward Lodge his attorney, comes and defends the wrong and injury, when, &c. and as to the supposed promises and undertakings in the said 1st, 2d, 5th, 6th, 9th and 10th counts of the said declaration mentioned, says, that he did not undertake and promise in manner and form as the said Thomas hath above thereof complained against him; and of this he puts himself upon the country, &c. And as to the 3d, 4th, 7th, and 8th counts of the said writ and declaration mentioned, the said Michael claims judgment of the writ aforesaid, and the declaration thereon founded; because he says, that the said several supposed promises and undertakings in the said 3d, 4th, 7th, and 8th counts mentioned, if any such ever were made, were, and each of them was made by A. and B. and the said Michael jointly, and not by the said Michael alone, as the said Thomas hath in and by his said writ and declaration supposed, and that the said A. and B. at the time of the commencement of this suit, were and yet are living, to wit, at Ulverstone aforesaid, in the county aforesaid; and this he the said Michael is ready to verify: wherefore, inasmuch as the said A. and B. are not named in the said writ, or the said declaration thereon founded, the said Michael prays judgment, and that the said writ and declaration may be quashed, &c.

Plea in bar non assumpsit to some counts, and in abatement to others, that the promises were made jointly with another, and not by the defendant alone.

THO. BARROW.

AND the said Michael Van Millinger, Samuel Poole, Thomas Quintin, Alexander Goodwin, Peter Gaussen, Gabriel Clarmont, James Seawen, William Downes, Isaac Lucas, and James Flint, by Giles Bleasdale their attorney, come and defend the wrong and injury, when, &c. and say, that the said several promises and undertakings in the said declaration mentioned (if any such were or was made) were, and each and every of them was made by them the said defendants, together with one James Farquharson, John Atkins, Peter Aurioll, and William Moffatt, *jointly*, and not by them the said defendants (naming them) separately from and without the said James Farquharson, John Atkins, James Peter Aurioll, and William Moffatt, to wit, at Westminster; and that the said J. F. J. A. J. P. A.

Plea in abatement, that some of the plaintiffs were partners with the defendants, and therefore could not sue.

J. P. A. and W. M. at the time of exhibiting the bill of the faid plaintiffs againft them, were and ftill are living, and in full life, to wit, at Weftminfter aforefaid, in the county aforefaid; and this they the faid defendants (naming them) are ready to verify: wherefore, inafmuch as the faid J. F. J. A. J. P. A. and W. M. are not named in the faid declaration, they the faid defendants (naming them) pray judgment, and that the fame declaration may be quafhed, &c. V. GIBBS.

N. B. Mr. Gibbs, after drawing this plea, thought it fhould be in bar, and fo altered it. [illegible]

[illegible]

Plea in abatement to an *indictment* in B R. that the houfe is in the parifh of Tiverton, which is chartered by letters-patent from George the Firft, authorifing a mayor, recorder, &c. to take cognizance of all things within the parifh, and excluding juftices of the county.

AND the faid Henry Finch, George Roffile, George Peard, Samuel Hatfell, Henry Dull and Elizabeth his wife, Margaret Roffiler, and Gregory Sharland, by Oliver Jones their attorney, come into the court of our faid lord the now king, before the king himfelf here, and pray judgment of the faid indictment, and that the fame may be quafhed, becaufe they fay, that true it is that the faid meffuage called Pall-Houfe in the faid indictment mentioned, is fituate, lying, and being in the parifh of Tiverton aforefaid, in the faid county: but the faid Henry Finch, &c. fays, that the town and the faid parifh of Tiverton, in the faid county of Devon aforefaid, are, and at the time of granting the letters patent herein after mentioned were, an ancient town and parifh, that is to fay, at the parifh of Tiverton aforefaid; and that our late fovereign lord George the Firft, late king of Great Britain, &c. by his letters patent under the great feal of Great Britain, bearing date at Weftminfter, the fourth day of December, in the eleventh year of his reign, willing (amongft other things), that for ever thereafter in the faid town and parifh there fhould be continually had one certain and undoubted method of and for the keeping of the king's peace, there did (amongft other things), for himfelf, his heirs and fucceffors, will, conftitute, ordain, grant, confirm, and declare, that the faid town and parifh of Tiverton, in the faid county of Devon, fhould be and remain from thenceforth for ever thereafter a free town and parifh of itfelf, and that the inhabitants of the faid town and parifh, and their fucceffors, fhould be for ever thereafter, by virtue of the faid letters patent, one body corporate and politic, in deed, fact, and name, by the name of The Mayor and Burgeffes of the Town and Parifh of Tiverton, in the County of Devon, and them, by the name of mayor and burgeffes, &c. in one body corporate and politic, in deed, fact, and name, did really and fully, for himfelf, his heirs and fucceffors, enact, make, ordain, conftitute, create, confirm, and declare, by the faid letters patent, and that by the fame name they fhould have perpetual fucceffion; and the faid late king did, by the faid letters patent, for himfelf, his heirs and fucceffors, grant, ordain, confirm and declare, that from thenceforth for ever thereafter there fhould be within the parifh aforefaid, one of the moft difcreet and honeft men of the town and parifh aforefaid, in form thereafter in the faid letters patent mentioned, to be chofen, that fhould be, and fhould

Letters patent fet out.

be

be named, mayor of the ſaid town and pariſh aforeſaid; and that there ſhould be likewiſe, from time to time, within the town and pariſh aforeſaid, twelve of the moſt diſcreet and honeſt inhabitants of the town and pariſh aforeſaid, who ſhould be, and ſhould be named, lawful burgeſſes of the town and pariſh aforeſaid; and that the mayor of the town and pariſh aforeſaid, then after in the ſaid letters patent named, and every other mayor of the town and pariſh aforeſaid, ſhould be of the number aforeſaid of the twelve capital burgeſſes of the town and pariſh aforeſaid; and that there ſhould be within the ſaid town and pariſh, from time to time, twelve other of the devouteſt and honeſteſt inhabitants of the town and pariſh aforeſaid, who ſhould be, and ſhould be named, aſſiſtants of the town and pariſh aforeſaid; which ſaid capital burgeſſes and aſſiſtants ſhould be, and ſhould be named, the common council of the ſaid town and pariſh. And our late ſovereign lord king George the Firſt, by his ſaid letters patent, for himſelf, his heirs and ſucceſſors, did aſſign, name, conſtitute, and make Nathaniel Thorn, an inhabitant of the town of Tiverton aforeſaid, to be the modern mayor of the town and pariſh aforeſaid: and our ſaid late ſovereign lord George the Firſt, by his ſaid letters patent, willed, that the ſame Nathaniel Thorn ſhould be and continue in the office of mayor of the ſame town and pariſh, from the date of the ſaid letters patent, until Tueſday next after the feaſt of St. Bartholomew then next enſuing, and from that day until another capital burgeſs of the town and pariſh aforeſaid ſhould be choſen and ſworn into the ſame office, according to the ordinances and conſtitutions in the ſaid letters patent thereafter expreſſed and declared, if the ſaid Nathaniel Thorn ſhould ſo long live. And the ſaid late king George the Firſt, by his ſaid letters patent, for himſelf, his heirs and ſucceſſors, did aſſign, nominate, conſtitute, confirm and declare Oliver Peard, &c. inhabitants of the town and pariſh aforeſaid, to be capital burgeſſes of the ſaid town and pariſh, to continue in the ſame office during their natural lives, unleſs in the mean time, for their mal-government or ill behaviour in that behalf, they, or either of them, ſhould be removed from the ſaid office. And moreover, the ſaid late king George the Firſt, by his ſaid letters patent, for himſelf, his heirs and ſucceſſors, did name, conſtitute, make, confirm, and declare Leonard Blagden, &c. inhabitants of the town and pariſh aforeſaid, to be aſſiſtants of the ſaid town and pariſh, to continue in the ſaid office during their natural lives, unleſs, &c. as before, willing notwithſtanding, and the ſaid late king, by the ſaid letters patent, did declare, that it ſhould be, and was his will and pleaſure, that the ſaid Nathaniel Thorn did not take upon him the execution of the office of mayor of the town and pariſh aforeſaid, until he had taken a corporal oath to execute the ſaid office rightly and faithfully in all things, and by all things touching the ſame office, before William Coleman, &c. or any two or more of them to whom our ſaid late king George the Firſt did, by the ſaid letters patent, give and grant full power and authority to adminiſter ſuch oath to the ſaid Nathaniel

Conſtituting mayor.

Certain inhabitants aſſiſtants.

thaniel Thorn, without any other warrant or commission in that behalf to be procured or obtained from the said late king George the First, his heirs or successors. Moreover, our said late king George the First, by his said letters patent, willed, that the said capital burgesses and assistants of the town and parish aforesaid, who for ever thereafter for the time being should be named, before they, or either of them respectively, should be admitted to the execution of the offices of capital burgesses or assistants of the town and parish aforesaid, should take a corporal oath before the mayor of the town and parish aforesaid for the time being, that they, and each of them, would well and faithfully execute their respective offices in all things and by all things appertaining to the said office. [The plea then proceeds to recite several other clauses of the charter, directing the mode of electing their several officers above mentioned, and appointing a recorder to continue in office *durante bene placito*, with the manner of his election, &c.]. And moreover, the said late king George the First willed, and by the said letters patent, for himself, his heirs and successors, did grant and confirm to the said mayor and burgesses of the town and parish aforesaid, and their successors, that the said Nathaniel Thorn, in the said letters patent named to be mayor of the town and parish aforesaid, and the aforesaid Oliver Peard, during the time that the said Nathaniel Thorn should execute the said office of mayor of the town and parish aforesaid, and every other mayor of the town and parish aforesaid who should thereafter be for the time being, and also the said John Webster, in the said letters patent named to be recorder of the town and parish aforesaid, during the time he should execute the office of recorder of the town and parish aforesaid, and every other recorder of the town and parish aforesaid, who should thereafter be for the time being, and every person who should have and exercise, or thereafter should have and exercise, the office of mayor of the town and parish aforesaid, after that he should depart from the office of mayor of the said town and parish, during one whole year immediately next after his departure from such office, from thenceforth for ever thereafter, might and should be; and each and every of them might and should be, our said late sovereign lord the king's justices, and the justices of his heirs and successors, to preserve and keep the peace, and the peace of his heirs and successors, within the town and parish aforesaid, and the precincts and limits of the same, and to keep, and cause to be kept, all ordinances and statutes made for the good of the peace of our said late king George the First, his heirs and successors, and for the preservation of the same, in all its articles, within the town and parish aforesaid, and the limits and precincts of the same, according to the form and effect thereof, to chastise and punish all delinquents against the form of the same ordinances and statutes, or any of them, within the town and parish aforesaid, the liberties and precincts of the same, as was to be done, and according to the form of the said statutes and ordinances, and to cause all those who should use any threatening to any one or any of the people

Mayor and recorder for time being, and persons who should have exercised office of mayor to be justices of the peace within limits and precincts of the town and parish.

people of the ſaid late king George the Firſt, his heirs and ſucceſſors, for the hurting of their bodies, or the burning of their houſes, to find ſecurity for the peace, and for their good behaviour towards the ſaid late king George the Firſt, his heirs and ſucceſſors, and the people of the ſaid late king George the Firſt, his heirs and ſucceſſors; and if they ſhould refuſe to find ſuch ſecurity, then to cauſe them to be ſafely kept in the priſon of the ſaid late king George the Firſt, his heirs and ſucceſſors, until they ſhould find ſuch ſecurity; and that the ſaid Nathaniel Thorn and Oliver Peard, during the time that the ſaid Nathaniel Thorn ſhould execute the office of mayor of the town and pariſh aforeſaid, and the mayor of the town and pariſh aforeſaid for the time being, and the ſaid John Webber, during the time that he ſhould be recorder of the town and pariſh aforeſaid, that the recorder of the town and pariſh aforeſaid for the time being, and the aforeſaid perſon who ſhould have and execute, or thereafter ſhould have and execute the office of mayor of the town and pariſh aforeſaid, or any two or more of them whom the ſaid late king George the Firſt would have the mayor or recorder of the town and pariſh aforeſaid for the time being to be one, ſhould have full power and abſolute authority from time to time for ever, to inquire, by the oaths of honeſt and lawful men of the town and pariſh aforeſaid, by whom the truth might be the beſt known, of all and all manner of petty treaſons, murders, homicides, felonies, witchcrafts, inchantments, ſorceries, magic arts, treſpaſſes, engroſſers, foreſtallers, regrators, and extortioners whatſoever, of all and ſingular other miſdemeanors and offences whatſoever, of which the juſtices aſſigned to keep the peace of the ſaid late king George the Firſt, his heirs and ſucceſſors, in any county of this realm of England, ought and might lawfully inquire into, by whomſoever and howſoever, within the ſaid town and pariſh aforeſaid, the liberties and precincts of the ſame, theretofore done or committed, or which thereafter ſhould happen to be there done or attempted; and alſo of all thoſe who, within the town and pariſh aforeſaid, or in the liberties or precincts of the ſame, in conventicles, againſt the peace of the ſaid late king George the Firſt, his heirs and ſucceſſors, in diſturbance of the people of the ſaid late king George the Firſt, his heirs or ſucceſſors, or with ſtrength had gone or ridden armed, or thereafter ſhould preſume to go or ride armed, and alſo of all thoſe who had lain in wait to maim or kill the people of the ſaid late king George the Firſt, his heirs or ſucceſſors, or who thereafter ſhould preſume to lay in wait, and alſo of all hoſtlers, and alſo of all and ſingular other perſons who had offended or attempted, or who thereafter ſhould offend or attempt, within the town and pariſh aforeſaid, or the precincts or liberties thereof, in the abuſe of weights and meaſures, or in ſelling of victuals againſt the form of the ordinances and ſtatutes, or any of them, made for the common utility of the realm of England, and of the people of the late king George the Firſt, his heirs and ſucceſſors; and alſo of whatſoever conſtables, gaolers, and other officers to whom

Authority to hold ſeſſions.

the execution of the offices about the premises should belong, or any of them, who had unduly behaved themselves, or thereafter should presume unduly to behave themselves, or who had been remiss or negligent, or thereafter should happen to be, within the town and parish aforesaid, or the liberties or precincts of the same, and of all and singular articles and circumstances, and other things whatsoever, by whomsoever, and howsoever, within the town and parish aforesaid, or the liberties or precincts of the same, done, committed, or which should thereafter happen to be done or attempted howsoever, concerning the premises or any of them, and inspect all indictments whatsoever which thereafter should be taken before the said Nathaniel Thorn and Oliver Peard, during the time in which the said Nathaniel Thorn should execute the office of mayor of the town and parish aforesaid, and the mayor of the town and parish aforesaid for the time being, and the said John Webber, the recorder of the town and parish aforesaid for the time being, and the aforesaid person who should have and execute the office of mayor of the town and parish aforesaid, or any two or more of them (the mayor or recorder of the town and parish aforesaid for the time being always to be one), and to issue out and continue process on the said indictments against all and singular persons indicted, until they should cause them to be taken, or until they should render themselves to be outlawed, and to hear and determine all and singular the premises which, according to the laws and statutes of this kingdom, in such case were accustomed and ought to have done, and to chastise and punish all offenders, and every of them, for their offences, by fines, redemptions, amerciaments, forfeitures; and others, according to the laws and customs of England, and the forms of the ordinances or statutes aforesaid; yet notwithstanding that they do not proceed to the determination of any petty treason, felonies, or other offences whatsoever touching the loss of life or members within the town and parish aforesaid, without the special licence of our said late sovereign lord king George the First, his heirs and successors. Moreover, our said late sovereign lord king George the First did will, and by the said letters patent, for himself, grant the said mayor and burgesses of the town and parish aforesaid, and their successors, that no justice of our said late king, his heirs and successors, within the aforesaid county of Devon, should anywise enter into, or intermeddle to do or execute anything within the town and parish aforesaid, or the liberties and precincts of the same, which justices of the town and parish aforesaid, by virtue of the said letters patent, could or ought to do and execute, provided that the said letters patent, or anything therein contained, should not extend, nor should be construed to extend, to exclude or hinder the justices of the said late king, his heirs and successors, assigned or to be assigned to keep the said late king's peace within his county of Devon, or any of them, from executing the office aforesaid of a justice assigned to keep the said late king's peace within the town and parish of Tiverton aforesaid, in all things and

Non intromittant clause except in matters concerning the king's revenues.

and matters touching or concerning any revenues of our said late sovereign lord king George the First, his heirs and successors, or any of them. And further, our said late sovereign lord king George the First did will, and by his said letters patent, for himself, his heirs and successors, did grant to the said mayor and burgesses of the town and parish aforesaid, and to their successors, that it should and might be lawful for the mayor and recorder of the town and parish aforesaid for the time being, and for the said Oliver Peard during the time that the said N. Thorn should execute the office of mayor of the town and parish aforesaid as aforesaid, and every person who should execute the office of mayor of the said town and parish aforesaid during one whole year after he should depart from that office, or any two of them, of whom the mayor for the time being always should be one, in any convenient place within the town and parish aforesaid, to hold and keep a general sessions of the peace of our said late sovereign lord king George the First, his heirs and successors, for all things, matters, and offences happening, falling, or done within the said town and parish, and the liberties and precincts of the same, and to do and execute all things in the same sessions in as ample a manner and form as the justices of the peace of our said late sovereign lord king George the First, his heirs and successors, in his county of Devon, did or could do, or thereafter might do; yet notwithstanding, that they might not proceed to the determination of any petty treason, felony, or other offence whatsoever touching the loss of life or member within the town and parish aforesaid, without the special licence of our said late sovereign lord king George the First, his heirs and successors, as by the said letters patent, remaining of record in the court of Chancery of our lord the present king, at Westminster, in the county of Middlesex, more fully and at large appears; which said letters patent, soon after the granting thereof, to wit, on the fourth day of December, in the eleventh year of the reign of our said late king George the First, to wit, at the town and parish of Tiverton, in the county of Devon aforesaid, the then inhabitants of the said town and parish duly accepted, and by means thereof the inhabitants of the parish aforesaid became, and were, and ever since hitherto have been, and continued to be, and still are, a body corporate and politic, in deed, fact, and name, by the name of The Mayor and Burgesses of the Town and Parish of Tiverton, in the county of Devon. And the said Henry Finch, &c. in fact further say, that under and by virtue of the said letters patent, at the time of presenting the said indictment, there were, and from thence hitherto have been, and still are, a mayor, recorder, and capital burgess of the said town and parish, and who has served the office of mayor of the said borough, and who for the time being have been, and have acted as justices of our lord the now king, assigned to keep the peace within the town and parish aforesaid, and also to hear and determine trespasses and other misdemeanors committed within the said town and parish, and the precincts and limits thereof; and who,

Averment that there has been and still is mayor, &c. and that since granting of letters patent have held sessions yearly.

under and by virtue of the letters patent, had full power and absolute authority to inquire, by the oaths of good and lawful men of the town and parish aforesaid, by whom the truth might be the best known, of the said offence in the said indictment mentioned. And the said Henry Finch, &c. in fact further say, that ever since the granting of the said letters patent hitherto, the mayor, recorder, or person who hath last served the office of mayor of the said town and parish, of whom the mayor of the said town and parish for the time being hath always been one for the time being, have yearly and every year held general sessions of the peace in and for the said town and parish, for hearing and determining trespasses and other misdemeanors committed within the said town and parish aforesaid; and this they the said Henry Finch, &c. are ready to verify: wherefore they pray judgment of the said indictment, and that the same may be quashed, &c. [*See* INDICTMENTS.] C. RUNINNGTON.

Demurrer to plea in abatement to indictment.

And sir James Burrow, knight, coroner and attorney of our sovereign lord the king, in the court of our said lord the king, before the king himself, for our said lord the king saith, that by reason of anything by the said Henry Finch, &c. above in pleading alledged, the said indictment ought not to be quashed, because he says that the said plea and the matters therein contained are not sufficient in law to quash the said indictment, to which said plea, in manner as the same is above pleaded, our said lord the king is not under any necessity, nor obliged by the law of the land in any manner to answer; and this he the said coroner and attorney of our said lord the king, for our said lord the king, is ready to verify: wherefore, for want of a sufficient plea in this behalf, our said lord the king prays judgment, and that the said Henry Finch, &c. may be convicted of the premises in the said indictment mentioned. [*See* DEMURRER TO PLEAS, *and* PROCEEDINGS IN CRIMINAL SUITS.] W. BALDWIN.

Joinder in demurrer.

And the said H. Finch, &c. say, that the said plea and the matters therein contained are sufficient in law to quash the said indictment, which said plea and the matters therein contained they the said H. Finch, &c. are ready to verify and prove in such manner as the court here shall direct: wherefore, inasmuch as the said coroner and attorney of our said lord the king, for our said lord the king, hath not answered the said plea, nor in any wise denied the same, the said Henry Finch, &c. pray judgment of the said indictment, and that the said indictment be quashed, &c.

Plea in abatement to the writ (in trespass in the C. B. against seven defendants after plea by two of not guilty) by *four* others *jointly* of the want of proper *additions.*

AND the said William, James, George, and John come in their proper persons, and pray judgment of the aforesaid writ, because they say that the aforesaid writ ought to have been sued out and prosecuted by the said Joseph in this behalf against them, by

the names and additions following: that is to say, James Jobbins, late of Knightsbridge, in the county of Middlesex, bricklayer; William Vaughan, late of the same place, labourer; George Stone, late of the same place, gardener; and John Carswel, late of the same place, cordwainer; and not in the same form in which it above appears to have issued against them; and this they are ready to verify: wherefore, for want of proper additions of degree and calling in this behalf, they pray judgment of the aforesaid writ, and that the same may be quashed. N. GROSE.

Special demurrer to the above plea, that these defendants ought to have severed in such plea; that they have not averred their additions; they have not set forth a defective writ, nor shewn that the proper additions are there wanting; that no issue can be taken; that it is pleaded in abatement of the whole writ; whereas it should have been in abatement of it as to those defendants only.

——— said Joseph, as to the said plea of the said James, William, George, and John, by them above pleaded, says, that the said plea and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the aforesaid writ of him the said Joseph, nor is the said Joseph under any necessity or in any wise bound by the law of the land to answer thereto; and this he the said Joseph is ready to verify; wherefore he prays judgment, and that the said James, William, George, and John may answer over to the aforesaid declaration against them. And for causes of demurrer in law, he the said Joseph assigns and shews to the court here as follows, to wit, For that the said plea is pleaded by the said James, William, George, and John jointly; whereas the want of or imperfection of additions can only be pleaded by each of the defendants severally and distinctly, and as to his own particular addition without regard to the addition of any co-defendant: and for that the said James, William, George and John have not in and by the said plea averred or alledged the several and respective degrees and callings in the said plea mentioned and set forth: and for that the said James, William, George, and John have not in or by their said plea stated or set forth any defective or other original writ in this action or suit, nor is it in or by the said plea positively averred or alledged that the said several additions of degree and calling by the said plea supposed to be omitted are not contained in the writ of the said Joseph, though omitted in the declaration: and for that no issue can be taken: and for that the said plea is pleaded in abatement of the whole writ of the said Joseph in this action or suit, whereas it ought to have been pleaded in abatement thereof as to the said James, William, George, and John only: and for that the said plea is in other respects uncertain, insufficient, argumentative, and informal, &c. [See DEMURRER TO PLEAS.] THO. WALKER.

Joinder in demurrer.

And the said James, William, George, and John say that the said plea of them the said James, William, George, and John, and the matters therein contained, are sufficient in law to quash the aforesaid writ of the said Joseph; which said plea, and the matters therein contained, they the said James, William, George, and John are ready to verify and prove as the court shall direct, &c.: wherefore, since the said Joseph hath not denied or in any wise answered

answered their aforesaid plea, but totally refused to admit the verifying, they the said James, William, George, and John, as before, pray judgment of the said writ, and that the same may be quashed. N. Grose.

Plea in abatement of the writ by the seventh defendant, that his christian name is Nicholas, but that he is sued by the name of Peter.

AND Nicholas Osborne, impleaded by the name of Peter Osborne, in his proper person comes and defends the wrong and injury, when, &c. and saith that he was baptized by the name of Nicholas, to wit, at the parish of Carrick, in the county of Tipperary, in the kingdom of Ireland, and from his baptism hitherto has been always known by the name of Nicholas; without *that* that he the said Nicholas now is, or at the time of issuing the writ of the said Joseph was, or ever before had been, or ever since hath been, called or known by the christian name of Peter, as by the writ and declaration of the said Joseph is above supposed; and this he the said Nicholas is ready to verify: wherefore he prays judgment of the said writ, and that the same may be quashed, &c. N. Grose.

Special demurrer thereto, because it appears on the record that he is declared against by the name of Nicholas; that defendant has changed the venue in his plea without necessity, and has given no venue where the issue may be tried; that he has not shewn any defect in the original writ, or that he was not properly named there; that he has improperly pleaded in abatement of the whole writ.

And the said Joseph, as to the said plea of the said Nicholas by him above pleaded, says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the aforesaid writ of him the said Joseph, nor is he the said Joseph under any necessity nor in any wise bound by the law of the land to answer thereto; and this the said Joseph is ready to verify: wherefore he prays judgment, and that the said Nicholas may answer over to his aforesaid declaration. And for causes of demurrer in law he the said Joseph assigns and shews to the court here as follows, to wit, For that the said Nicholas hath alledged in his said plea, that he hath been impleaded and declared against by the said Joseph in this suit by the christian name of Peter instead of Nicholas; whereas it appears by the said declaration, and by the record and proceedings before this court, that he hath been and is impleaded and declared against by the christian name of Nicholas, and that the said Nicholas hath in his said plea varied from the place and venue in the said declaration mentioned, without any absolute necessity for so doing: and for that the fact of the said Nicholas's baptism is alledged to have arisen in the kingdom of Ireland; whereas such fact should have been pleaded to have arisen at Knightsbridge, in the county of Middlesex, the venue mentioned in the declaration, in order that the same might be brought and fall within the cognizance of the jury here that might be impanelled to try such fact in case it was put in issue; and for that the said Nicholas hath not set forth in his said plea any defective or other original writ of the said Joseph in this suit, nor is it in or by the said plea avowed or stated positively that the said Nicholas is not so named in the writ of the said Joseph, or that such writ is against him by the name of Peter: and for that the said plea is pleaded in abatement of the whole writ of the said Joseph in this action

action or suit; whereas it ought to have been pleaded in abatement of the said writ as to the said Nicholas only: and for that the said plea is in various other respects uncertain, insufficient, argumentative, and informal, &c. [*See* DEMURRER TO PLEAS.]

THO. WALKER.

[Here follows a joinder in demurrer by the defendant Osborne similar to that by the other defendants.]

Curia advisare vult. Dies datus.

But because the justices here will advise amongst themselves before they give judgment upon the said several premises, so referred to their determination as aforesaid, a day, that is to say, Tuesday the 17th day of June 1785, is given to the said Joseph, and to the said James, William, George, John, and Nicholas, to hear such judgment, for that the said justices here are not yet advised thereof, &c.

Judgment that the defendant should answer over.

Plea in abatement that the promises were made by defendant and twenty-two other *partners* not named, jointly and not separately.

AND the said John Murray in his own proper person comes and prays judgment of the said bill, because he says that the said several promises and undertakings in the said declaration mentioned, if any such were made, were made by one W. H. one T. R. one H. W. one J. R. junior, one J. C. one J. L. one W. P. one A. D. one A. L. one W. B. one J. W. one W. R. &c &c. (in number twenty-two) *jointly* with the said John Murray, and which said W. H. &c. &c. &c. were alive, and the said W. H. &c, &c. are, and each of them is still alive, to wit, at Westminster aforesaid: wherefore, because they are not, nor is either of them, named in the said bill, the said John Murray prays judgment of the said bill, and that the same may be quashed, &c.

EDWARD LAW.

Replication to the above plea.

And the said John Abraham Fisher and Robert Whitworth say, that the said bill of them, by reason of anything above by the said John Murray in pleading alledged, ought not to be quashed, because they say that the said several promises and undertakings in the said declaration mentioned were made, and each of them was made, by the said John Murray severally, as in the declaration aforesaid is above alledged, to wit, at London aforesaid, in the parish and ward aforesaid; and this they the said J. A. F. and R. W. pray may be inquired of by the country, &c. and the said John Murray doth the like; therefore let a jury come before our lord the king at Westminster, on, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties, there, &c.

J. MORGAN.

Another replication to similar plea.

And the said plaintiff, as to the said plea of the said defendant, says, that the said bill of them the said plaintiffs ought not, by reason of anything alledged in the said plea of the said defendant, to

to be quashed, because he says, that the said several promises and undertakings in the said declaration mentioned, and each and every of them, was made by the said defendant alone, in manner and form as the said plaintiff hath above thereof complained against him; and this he prays may be inquired of by the country. [*Similiter* and issue]. T. Barrow.

Plea in abatement, that the promises were made by the defendant and his partners jointly, and not by him separately.

AND the said John Stockdale, by Thomas Yates his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill of the said William, because he says, that at the time of the making the said several supposed promises and undertakings in the said declaration mentioned, he the said John Stockdale, one Edmund Dayrell, one Richard Weld, one John Morgan, one J. F. and one J. W. were partners in trade, and that the said promises and undertakings in the said declaration mentioned were made by the said J. S. jointly with them the said E. D. J. M. J. F. and J. W. and not separately by him the said J. S. and which said E. D. J. M. &c. &c. are still alive, to wit, at Westminster aforesaid, in the said county of Middlesex; and this he the said J. S. is ready to verify: wherefore, inasmuch as the said Edmund, Richard, &c. &c. are not named in the said bill, the said John Stockdale prays judgment of the said bill, and that the same may be quashed, &c.

Special demurrer, for that it ought to have been pleaded in

And the said William saith, that the said plea of the said John by him above pleaded, and the matters therein contained, are not sufficient in law to bar the said William from having and maintaining his aforesaid action against him the said John, to which said plea, in manner and form as the same is above pleaded, he the said William is not under any necessity, nor obliged by the law of the land, to answer; and this he is ready to verify: wherefore, for want of a sufficient plea in this behalf, the said William prays judgment, and his damages by reason of the premises to be adjudged to him, &c. *And for causes* of this demurrer in law, the said William, according to the form of the statute in such case lately made and provided, shews to the court here these causes following: for that the said John, in and by his said plea, *defends the wrong and injury, when, &c.*: and for that the said John concluded the said plea with *the prayer that the said bill of the said William might be quashed*, which is in the nature of a plea in abatement, whereas he ought to have concluded the said plea with a verification, and pray judgment if the said William ought to have his action against him the said John: and for that the said plea is in other respects informal and insufficient.

And the said John says, that the plea aforesaid, in manner and form aforesaid by him the said John above pleaded, and the matter in the same contained, are good and sufficient in law to quash the said bill of the said William, which said plea so pleaded, and the

matter

matter therein contained, he the said John is ready to verify and prove, as the said court shall award: and because the said William hath not answered the said plea, nor hitherto in any manner denied the same, he the said John, as before, prays judgment of the said bill, and that the same may be quashed.

Plea of *privilege* (*a*) of an attorney, a partner with another attorney, one of the K. B. the other C. P.

ff. AND the said J. D. and W. F. in their own persons, come and defend the wrong and injury, &c. and say, that the court here ought not to take, nor will take, cognizance of the plea aforesaid, because the said W. D. says, that he the said W. F. now is, and at the time of exhibiting the bill of the said John New against them the said J. D. (*b*) and W. F. and before, was, one of the attornies of the court of our lord the now king, before the king himself here, to wit, at Westminster aforesaid, as by the roll of the attornies of this court here fully appears, and that, as an attorney for many of the king's subjects, he is now prosecuting and defending divers suits and actions in the said court of our said lord the king, before the king himself here; and that he the said W. F. or any other attorney of this court, whilst he or they respectively are or is so prosecuting or defending any causes or suits in this court, by an antient and laudable custom used and approved in this court from time immemorial, ought not, nor ought any of them, contrary to their will, to be drawn into or compelled to answer any bill or bills to be exhibited against him or them, as in the custody of the marshal of the marshalsea of our lord the now king before the king himself, or in any other manner whatever, except by bill or bills to be exhibited in this court against him or them, as an attorney or attornies of this court, in all pleas, plaints, and demands, which do not relate to his majesty's person (pleas relating to freeholds, felonies, and appeals, only excepted; and this he the said W. F. is ready to verify: wherefore he prays judgment if he ought to be compelled to answer to the said John New in the said plea in the said court here.

(*a*) You may either plead privilege with a *profert* of the writ, or with an *exemplification* of the record, or as this is pleaded.—Salk. 545. 1. Com. Dig. 3, 4. 2. Crompt. Pract.

(*b*) J. D. is an attorney of C P.

As the above plea supposes the defendants to be practising attornies at the time of commencing this suit, it perhaps may be deemed necessary for the defendants to shew some act done by them as attornies after the admission of Mr. D. and before the bringing of this action, suppose the plaintiffs should dispute it. Any act done in a cause (even writing a letter demanding a debt preparatory to an action brought) I think would be sufficient.

T. BARROW.

Plea in abatement that plaintiff is a *popish recusant convict*.

AND the said Joseph Ellyet, G. E. and Geo. Barnett, by Christopher Hall their attorney, come and say, that the said Richard Knapp ought not to be answered to his writ and declaration aforesaid, because they say, that after the making of a certain act

of

of parliament, made at the parliament begun and holden at Westminster, in the county of Middlesex, on the 17th day of March, in the first year of the reign of our sovereign lord George the First, late king of Great Britain, France, and Ireland, defender of the faith, and so forth, intitled, "An Act for the further Security of "his Majesty's Person and Government, and the Succession of "the Crown in the Heirs of the late Princess Sophia, being protestants, and for extinguishing the hopes of the pretended Prince "of Wales, and his open and secret Abettors;" and before the day of obtaining the said original writ of the said Richard Knapp, that is to say, on the 6th day of October, in the year of our Lord 1745, at Warblington, in the said county of S. Richard New, esq. John Gringo, esq and Samuel Marshall, esq. then three of the justices of our lord the now king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county of S. and all of them, being of the quorum, by force and according to the form and effect of the said act of parliament, did tender unto the said Richard Knapp, whom they then and there did suspect to be dangerous and disaffected to his majesty and his government, the oaths in that act of *(a)* parliament mentioned, and by the same act appointed to be taken, for the said Richard Knapp to take the same, and then and there were ready and offered to administer the said oaths to the said Richard Knapp, according to the form and effect of the said act of parliament; nevertheless the said Richard Knapp, to whom the said oaths were so tendered, did then and there refuse to take the same, and did then and there neglect, and hath ever since hitherto neglected, to take the same; of which refusal the said Richard New, John Gringo, and Samuel Marshall, the justices aforesaid, afterwards, and before the obtaining the said original writ of the said Richard Knapp, that is to say, at the quarter sessions of the peace of our lord the present king of the said county of S. held next after the said refusal, that is to say, at the quarter sessions of the peace of the said county held on the 14th day of January in the said year of our Lord 1745, at the castle of Winchester, in and for the said county of S. before the right honourable John lord viscount Lymington, the reverend Benjamin Woodroffe, clerk, prebendary of Winchester, Thomas Bates, &c. &c. and others their fellows, then justices of our said lord the now king, assigned to keep the peace of our said lord the king in the county of S. aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, did certify the said refusal of the said Richard Knapp in the court of that sessions of the peace, to be recorded in the rolls of that sessions, according to the form and effect of the said act of parliament; which said refusal was then and there recorded amongst the rolls of that sessions, as by the record thereof in the same court of sessions more fully appears, and from thence afterwards, and before the

(a) 1. Geo. 1. c. 13.

obtaining

obtaining the original writ of the ſaid Richard Knapp, that is to ſay, on the 1ſt day of May A. D. 1750, the ſaid refuſal was certified by Morgan Keene, eſq. then clerk of the peace of the county of Southampton aforeſaid, into his majeſty's court of chancery, held at Weſtminſter, in the county of Middleſex, there to be recorded amongſt the rolls of that court, in a roll in the ſaid court of chancery provided and kept for that purpoſe only, which afterwards, and before the obtaining the original writ of the ſaid Richard Knapp, that is to ſay, on the ſaid 1ſt day of May in the year laſt aforeſaid, was recorded amongſt the rolls of the ſaid court of chancery, in a roll in the ſaid court of chancery provided and kept for that purpoſe only, according to the form and effect of the ſaid act of parliament, as by the record thereof, in the ſame court of chancery at Weſtminſter remaining, more fully appears (the tenor of which record is now produced here in court); whereby, and by force of the ſaid act of parliament, the ſaid Richard Knapp from the time of his refuſal aforeſaid became, and on the day of ſuing out the ſaid original writ was, and yet is, a *popiſh recuſant convict*, and as a popiſh recuſant convict ought to be taken, eſteemed, and adjudged; which ſaid record of conviction is yet in full force and effect, not reverſed nor annulled; and this they are ready to verify: wherefore they pray that the plea aforeſaid may remain without day, until, &c.

D. POOLE.

AND the ſaid plaintiffs, as to the ſaid plea of the ſaid defendant, by her ſecondly above pleaded in bar, ſays, *præcludi non*, becauſe proteſting, that the ſaid plea, in manner and form as the ſame is above pleaded and ſet forth, and the matters therein contained, are inſufficient in law to bar the ſaid plaintiffs from having the ſaid action againſt her; proteſting alſo, that the ſaid defendant was not married to nor under *coverture* of the ſaid R. B. in the plea mentioned, in manner and form as the ſaid defendant hath in her ſaid plea in that behalf alledged: neverthele ſs, for replication in this behalf, the ſaid plaintiffs ſay, that the ſaid defendant, before the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the making of any or either of them, and before the ſeveral cauſes of action in the ſaid declaration mentioned, or any or either of them accrued, that is to ſay, on, &c. at, &c. eloped from the ſaid R. R. in the ſaid plea mentioned, and that ſhe hath from thence hitherto lived, and ſtill doth live, ſeparate and apart from the ſaid R. R. and that they the ſaid plaintiffs did and performed the work and labour in the declaration mentioned for the ſaid defendant, and at her requeſt and on her credit only, and ſold the goods and merchandizes in the ſaid declaration mentioned to the ſaid defendant, and at her requeſt and on her credit only, and that they laid out, expended, and paid the money in the laſt count of the ſaid declaration mentioned for the ſaid defendant, and

Replication to a plea of *coverture* in abatement, proteſting as to the ſufficiency of the plea; proteſting alſo, that the defendant is not a *feme covert*. Replication, that before the cauſe of action accrued, the defendant had eloped from her huſband, and that the work, &c. was done for the defendant at her requeſt, and on her credit only.

and at her requeſt and on her credit only, to wit, &c.; and this, &c.: wherefore, &c.

Plea in abatement of the bill in B. R. of *misnomer* in defendant's ſurname.

AND John Seabrook, againſt whom the ſaid Edward by his bill exhibited complains, by the name of John Scabrook, *by James Hodgſon (a) his attorney*, comes and defends the wrong and injury, &c. and prays judgment of the bill aforeſaid, becauſe he ſays, that he is named and called by the name of John Seabrook, and by the ſaid name of John Seabrook from the time of his baptiſm hitherto hath been called and known; without this, that the ſaid John Seabrook now is or ever was called or known by the name of John Scabrook, as by the ſaid bill is above ſuppoſed; and this he is ready to verify: wherefore he prays judgment of the ſaid bill, and that the ſame may be quaſhed.

(a) There muſt be a ſpecial warrant of attorney for this, Lat. 11. 1. Com. Dig. 70. for regularly defendant ought to appear and plead in perſon in ſuch caſe.

I am of opinion, that the miſnomer in this caſe is pleadable in abatement of the bill, the name of the defendant being Seabrook; but, both in the declaration *and on the back of it*, it is plainly wrote Scabrook, which is a material variance both in letter and ſound. There muſt be an affidavit of the truth of the plea annexed to it, according to the ſtatute 4. Anne, c. 16. before it is delivered.

T. Barrow.

Plea of *privilege* by an *attorney* ſued by aſſignees of a bail-bond given by him, proceeded againſt as a common perſon.

AND the ſaid William, in his own proper perſon, comes and defends the wrong and injury, and ſays, that he ought not to be compelled to anſwer to the ſaid bill of the ſaid plaintiffs, aſſignees as aforeſaid, becauſe he ſays, that he now is, and on the day of exhibiting the ſaid bill of the ſaid plaintiffs, aſſignees as aforeſaid, and long before was, one of the attornies of the ſaid court of our lord the king himſelf here attending in the ſame court, and that in the ſame court there is, and from time whereof the memory of man is not to the contrary there hath been, a certain antient and laudable cuſtom uſed and approved of in the ſame court, that is to ſay, that no attorney of the ſame court, againſt his will, hath been ſued nor ought to be ſued in any perſonal action in this court, otherwiſe than by bill exhibited againſt him as an attorney of this court preſent here in court: and the ſaid William farther ſays, that the ſaid bill exhibited againſt him by the ſaid plaintiffs, aſſignees as aforeſaid, in this ſuit is exhibited againſt him contrary to the ſaid cuſtom as a priſoner in the cuſtody of the marſhal of the marſhalſea of our ſovereign lord the king before the king himſelf, and not againſt him as an attorney of this court preſent here in court; and this the ſaid William is ready to verify: wherefore, ſince the ſaid William now is ſued, on the day of exhibiting the ſaid bill of the ſaid plaintiff's aſſignees as aforeſaid, and long before, was an attorney of this court preſent here in court in his own proper perſon, he prays judgment, and that

that his privilege as such attorney may be allowed him, and that he may *not* be compelled to answer to the said bill. H. RUSSELL.

It appears by the case of How *v.* Bridgwater, Barnes, 117 that an attorney by entering into *a bail bond waives his privilege* (*a*): wherefore, and as it is shewn on the face of the record by the declaration in this cause, that defendant has entered into a bail bond (for he is sued upon it), the Court must take notice that his plea is a nullity: I am of opinion that his plea is bad upon demurrer. In demurrer to a plea in abatement plaintiff *will not be entitled to costs* (*b*); but as the defendant (an attorney) is an officer of the court, I incline to think the Court would entertain a motion for him to shew cause why the plea should not be set aside, and he pay the costs of the application, for having first acted contrary to one of its known rules, in becoming bail, and afterwards attempting to take the advantage of his conduct.

T. BARROW.

(*a*) Quære, If he loses his privilege when sued in the same court?

(*b*) Mr. Baldwin, before whom this was laid, being of opinion, that though plaintiff would not have his costs of this demurrer immediately, yet if he ultimately succeeded, the master would allow them in the general costs of the action, for that cause demurred generally.

Plea in abatement, that one C. N. and one W. K. *promised jointly* with defendant, and that defendant did not promise.

AND the said W. C. in his own proper person comes and defends the wrong and injury, when, &c. and prays judgment of the bill aforesaid, because he says, that the said several promises and undertakings in the said bill mentioned, if any such were or was made, were, and each of them was, made as well by one C. N. and one W. H. as by the said William C. jointly, and not by the said William C. solely and separately, to wit, at Westminster aforesaid, in the county aforesaid, and that the said C. N. and W. C. at the time of the exhibiting the bill of the said B. D. against him the said William C. were and still are living and in full life, to wit, at Westminster aforesaid, in the county aforesaid; and this the said William C. is ready to verify: wherefore, inasmuch as the said C. N. and W. K. are not named in the bill aforesaid, he the said William C. prays judgment, and that the said bill may be quashed.

Replication and issue.

And the said B. says, that the said bill, by reason of anything by the said William C. above in pleading alledged, ought not to be quashed, because he says, that the said several promises and undertakings in the said bill mentioned were not, nor was either of them, made as well by the said C. N. and W. K. as by the said W. C. jointly, but that the same were, and each of them was, made by the said W. C. solely, in manner and form as by the said bill is above alledged; and this the said B. prays may be inquired of by the country, and the said W. C. doth the like; therefore, &c.

The plaintiff must not only prove the separate liability of the defendant C. but also the amount of his demand as the quantum of damages to be found by the jury.

Plea in abatement, that defendant's christian name is *Thomas*, and not John.

AND Thomas B. against whom the said B. hath exhibited his said bill by the name of John B. in his own person comes and says, that he was baptized by the christian name of *Thomas*, and by that christian name now is, and from the time of his baptism hitherto hath been, called and known, to wit, at A. &c.; without this, that he the said *Thomas* at the time of the commencement of this action, or at any time before or since, hath been or now is called or known by the christian name of *John*, as by the said bill is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the same might be quashed, &c.

Trinity Term, 32. Geo. III. (Roll) Witness Lloyd Lord Kenyon, Stormont and Way.

Warrants of Attorney.

LONDON *ss.* Jonathan J. puts in his place A. F. his attorney, against William H. in a plea of trespass upon the case.

LONDON *ss.* The said William appears in his own proper person, at the suit of the said Jonathan in the plea aforesaid.

Memorandum.

LONDON *ss.* Be it remembered, that on Friday next after the morrow of the Holy Trinity in this said Term, before our lord the king at Westminster, comes Jonathan J. by A. F. his attorney, and brings into the court of our said lord the king before the king himself now here, his certain bill against William H. being in the custody of our lord the now king before the king himself, of a plea of trespass upon the case, and there are pledges for the prosecution thereof, to wit, John Doe and Richard Roe, which said bill follows in those words, to wit [Here enter the declaration, the plea in abatement, and the demurrer thereto, *verbatim*].

Joinder in demurrer to a plea in abatement *dies datus.*

And hereupon the said Jonathan prays the court of our said lord the king now here, that the said William may join in demurrer, and thereupon a day is given to the said William before our said lord the king at Westminster, until Wednesday next after eight days of the Holy Trinity, to join in demurrer, &c. and the same day is given to the said Jonathan, at the same place; at which day before our said lord the king, comes the said Jonathan by his said attorney; and the said William (although solemnly required) comes not, but makes default *(a)*: wherefore it is considered by the Court, that the said William do further answer to the bill of the said Jonathan, upon Wednesday next after three weeks from the day of the Holy Trinity; the same day is given to the said Jonathan here, &c.; at which day, before our said lord the king at Westminster, comes the said Jonathan by his said attorney, and the said William comes not, nor doth he say any thing in bar or preclusion of the said action; for which reason, the said Jonathan ought to

Judgment by default.

(a) Lill. 492.

recover

recover against the said William his damages by occasion of the non-performance of the said several promises and undertakings in the said bill specified; but because it is unknown, &c. &c. &c. [in the usual form of judgment by default in assumpsit].

In the Exchequer of Pleas.

Plea in abatement to the first count in the declaration, *a writ of error pending*; [redacted]

AND the said James [redacted] his own proper person, comes and defends the wrong and injury, when, &c. and as to so much of the declaration aforesaid as relates to the sum of 19l. 10s. in the first co[redacted]rcel of the money above demanded; the [redacted] be quashed, because [redacted] in the said first count specified, and before the commencement of this action, to wit, on the 28th day of November A. D. 1788, the said James, for reversing the said judgment duly prosecuted out of the court of chancery of the said lord the king, at Westminster aforesaid, *a certain writ* of the said lord the king, *for correcting error* in the record and process, and also in the giving of the said judgment, directed to Lloyd lord Kenyon, then and yet chief justice of the said lord the king appointed to hold pleas before the king himself, whereby it was commanded to the said chief justice, that if judgment was given thereupon, then he should cause the record and process aforesaid, with all things touching the same, to come before his said majesty's justices of the common bench and the barons of his exchequer, in his exchequer chamber, at a certain day in the said writ specified, that the said justices and barons, viewing and examining the record and process aforesaid, might cause further to be done thereupon for amending the said error as of right, and according to the form of the statute, &c. should be meet to be done; which said writ of error afterwards, and before the commencement of this action, to wit, on the 27th day of January in the year 1789, at Westminster aforesaid, being then and there delivered to the said chief justice, was by him in due manner returned to the said justices of the common bench and barons, with the record and process aforesaid to the writ annexed, whereof the said John afterwards, and before the commencement of this action, to wit, on the day and year last aforesaid, had notice; and the said James further says, that the said writ for correcting error is still depending undetermined and in full force, and that the judgment aforesaid is not yet either affirmed or reversed; and this the said James is ready to verify: wherefore, as to so much of the declaration aforesaid as relates to the sum of 19l. 10s. in the first count thereof mentioned, the sai[redacted]mes prays judgment thereof, and that the same may be quashed, &c.; and as to so much of the declaration aforesaid as relates to the sum of 10l. in the second count thereof mentioned, and residue of the money above demanded, the said James says, that he does not owe to the said John the said sum of 10l. in the said count mentioned, or any part thereof, in manner and

 form

form as the said John hath therein complained against him; and of this he puts himself upon the country, &c.

Opinion. Although I have drawn a plea of the pendency of the writ of error in abatement according to my instructions, I am of opinion, that such a plea is not maintainable either in abatement or in bar. Vide 3. Bac. Abr. 212. and the cases there referred to. The plaintiff must however demur to it, and the defendant, after a judgment against him on demurrer to his plea, will still have an opportunity of pleading *again in chief*; but I should think it cannot be worth the defendant's while to purchase the time this plea may gain him at the necessary expence. There must be an affidavit annexed to the plea (if filed) that it is true in substance and matter of fact.

Plea in abatement to an *indictment*, that the defendant was *conversant* in the parish of St. M. and not in the parish of A. as is supposed by the indictment.

AND now, to wit, on Wednesday next after fifteen days of Easter in this same Term, in the court of our said lord the king before the king himself here, to wit, at Westminster, in the county of Middlesex, P. P. of the parish of St. Martin in the Fields, in the said county, refiner, who, by virtue of the writ of our said lord the king, is had here to answer our said lord the king of the premises contained in the indictment aforesaid, and thereby above alledged against him the said P. P. in his proper person, and having heard the said indictment read, he the said P. P. saith, that he ought not to be compelled to give any answer thereto, because protesting that the said indictment is insufficient in law; for plea in this behalf he the said P. P. saith, that he the said P. P. before and at the time of the taking of the inquisition aforesaid, and of finding the said indictment against him the said P. P. was, and from thence hitherto hath been, and still is, (*a*) *conversant* in the said parish of St. Martin in the Fields, in the said county of Middlesex, and he the said P. P. at the time of the taking the said inquisition, and of finding the said indictment against him the said P. P. or at any time before or afterwards hitherto, was not, nor was, nor hath he been, conversant in the parish of St. Margaret, Westminster, in the said county of Middlesex, as by the said indictment is above supposed; and this he the said P. P. is ready to verify: wherefore, inasmuch as in the said indictment addition is not made of the place of the which he, the said P. P. at the time of the taking the said inquisition, and of finding the said indictment, was, and still is, and in which he then was, and still is, conversant, according to the form of the statute of Addition in Indictments, in which the exigent may be awarded, he the said P. P. prays judgment of the said indictment, and that the same may be quashed, &c.

I am not certain whether it is necessary to accompany this plea with an affidavit of its truth; but if there be the least doubt about it at the office, I would make such affidavit; and more especially so, as the statute 4. Anne, c. 16. s. 11. makes no exception in favour of indictments, but requires an affidavit of the truth of every dilatory plea in every court of record. The affidavit is the usual one, that the plea hereto annexed is true in substance and matter of fact.

V. LAWES.

(*a*) The place where defendant is *conversant* is sufficient, though not *commorant* nor inhabitant. Baines, 162. Com. Dig. tit. Abatement, F.

AND

Plea in abatement to declaration *qui tam* on the statute of 15. Charles II. c. 8. against a butcher for selling live cattle, another action pending at plaintiff's suit for the same offence.

AND the said defendant, by G. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he says, that in the Term of Easter last, before our lord the king at Westminster, came the said plaintiff, by G. G. his attorney, and as well for our said lord the king as for himself, exhibited in the said court of our said lord the king before the king himself here, to wit, at Westminster aforesaid, his certain bill against the said *Richard*, by the name of William Henbrow, being in the custody of, &c. of a plea of debt, and found pledges of prosecution, to wit, John Doe and R. Roe, and by the said bill the said John complained against the said *Richard* by the name of *William* Henbrow, being, &c. of a plea, &c. which he owed, &c. [here recite the declaration to the end] as by the record thereof now here in the court of our said lord the king before the king himself at Westminster remaining, more fully appears, which said recited bill of the said plaintiff, who as well, &c. by him exhibited in the said court of our said lord the king before the king himself, in Easter Term as aforesaid, at the time of the commencement of this suit remained, and was wholly undetermined, no wise discontinued, quashed or annulled; and the said defendant further says, that the 600 sheep and the 40 oxen, and the selling thereof in the present bill first above mentioned, are the same sheep, oxen, and selling, and not other and different, and that the said 600 sheep and 40 oxen, and the offering to sale thereof, in the second count of the bill of the said plaintiff by him exhibited in Easter Term as aforesaid mentioned, and the said 600 sheep and 40 oxen, and the offering to sale thereof, in the second count of this present bill mentioned, are the same sheep, oxen, and offering to sale, and not other or different, and that the said 600 sheep and 40 oxen, and the exposing to sale thereof, &c. &c. [going through all the counts in the above manner]; and the said defendant further says, that the said person against whom the said plaintiff exhibited his said bill by the name of *William* H. in Easter Term as aforesaid, and the said *Richard*, against whom this present bill of the said plaintiff is exhibited, is the said Richard the now defendant, and are one and the same person, and not other and different persons: wherefore, &c. of this present bill of the said plaintiff, and that *that* bill may be quashed. [Affidavit as usual.]

Plea to the person of a misnomer in the defendant's Christian name.

AND he against whom the said plaintiff hath exhibited his said bill by the name of Daniel Stover, in his own proper person comes and *(a)* defends the wrong and injury, &c. and pleads, that he was baptized by the name of *Charles*, to wit, at, &c. aforesaid, and by the name of Charles hath always since his baptism hitherto been called and known; without this, that he the said defendant now is, or at the time of the exhibiting the bill of the said plaintiff was, or ever before had been, called or known by the Christian name of

(*a*) A plea of misnomer must be without defence, vide Black. Com. 298.—See contra, Com. Dig. tit. Abatement, I. 16.

 Daniel,

See Hixon *v.* Binns, 3. Term Rep. B. R. 185.

Daniel, as in and by his said bill is above supposed; and this he is ready to verify: wherefore *he prays judgment of the said bill, and that the same may be quashed, &c.*

Replication to the above plea, that the defendant is called and known as well by one name as the other.

S. P. Imp. Pract. B. R. 252.

And the said plaintiff saith, that his said declaration ought not to be quashed by reason of anything in the said plea above alledged, because he saith, that the said Charles Stover, who now appears to the bill and declaration of him the said plaintiff, is the same person against whom the said plaintiff brought his said bill; and that he the said Charles Stover long before, and at the time of exhibiting, &c. was, and still is, called and known as well by the name of Daniel Stover as by the said name of Charles Stover; and this he the said plaintiff prays may be enquired of by the country; and the said Charles doth the like, &c.: wherefore, &c.

Plea to the person, that defendant is of another addition than that by which he is sued.

As to the propriety of this alteration, see Com. Dig. tit. "Abatement" I. 16.

Co. Lit. 127. b.

Hixon *v.* Binns, 3. Term Rep. 185.

AND W. H. of London, merchant, against whom the said plaintiff hath obtained his original writ in this cause, by the name of W. H. late of London, broker, in his own person comes and defends the wrong and injury, &c. and prays judgment of the aforesaid writ of the said plaintiff, because he saith, that he the said W. H. on the day of obtaining the aforesaid original writ, and long before, was, and from thence hitherto hath been, and still is, a merchant; and that he the said defendant, on the said day of obtaining the said original writ, was not, nor at any time either before or afterwards hitherto has been, a broker, as by the said writ is above supposed: and this, &c.: wherefore, inasmuch as the said W. H. is not named of the very mystery of which he really is, according to the form of the statute of Additions of Surnames and Names in Writs in which process of outlawry lies, lately made and provided, the said defendant *prays judgment*, and that, &c.

S. URLIN.

Replication to the last plea, that defendant was a broker, as, &c.

And the said plaintiff saith, that for the occasion before alledged the said original writ of the said plaintiff ought not to be quashed, because he saith, that the said defendant, on the day of obtaining the said original writ, was, and before then had been, a broker, as by the said writ is above supposed, to wit, at, &c. aforesaid; and this he prays may be enquired of by the country, &c.

Plea to the jurisdiction of privilege by an attorney of the common pleas to an action brought [illegible] in the king's bench.

AND the said defendant in his own proper person *comes and defends the wrong and injury when, &c.* (a); and says, that this court here ought not to take, nor will take, cognizance of the plea aforesaid, because he saith, that he the said defendant long before, and at the time of the exhibiting of the bill of the said plaintiff was, and from thence hitherto hath been, and still is, one of the

(a) Vide Black. Com. 3d vol. 298. Co. Lit. 127. Salk. 217. Ld. Raym. 282. with respect to the making full defence in the pleas to the jurisdiction of the court.

attornies of the court of our lord the king of the bench, to wit, at Weſtminſter, in the county of Middleſex, aforeſaid; and that he the ſaid defendant, during all the time aforeſaid, hath proſecuted and defended, and ſtill doth proſecute and defend, divers pleas and ſuits in the ſaid court of the bench at Weſtminſter aforeſaid, for many true and faithful ſubjects of our ſaid lord the king, as their attorney; and the ſaid defendant further ſaith, that he, and all other the attornies of the ſaid court of the bench proſecuting and defending ſuits and pleas for their clients in the ſaid court of the bench, ought, by an antient and laudable cuſtom, from time immemorial uſed and approved of, according to the laws and cuſtoms of this realm, and the liberties and privileges of the ſaid court of the bench, to be free and exempt from being compelled againſt their wills, and have not, nor hath any or either of them, at any time or times whatſoever hitherto, been uſed and accuſtomed to be compelled to anſwer any plea or plaint in any action perſonal (pleas of freehold, felony, and appeals only excepted), before any juſtices or miniſters of our lord the king, or other judge whomſoever, in any court whatſoever, except before the juſtices of our lord the king of the court of the bench at Weſtminſter aforeſaid, by bill filed in the ſaid court againſt ſuch attorney or attornies as preſent here in court; and this he is ready to verify: wherefore he prays judgment if he ought to be compelled to anſwer to the ſaid plaintiff in the ſaid plea in the ſaid court here, &c.

See poſtea,

Vide Ld. Raym. 63.

AND the ſaid plaintiff ſays, that he the ſaid defendant, notwithſtanding any thing by the ſaid defendant in his ſaid plea alledged, ought to anſwer to the ſaid bill of the ſaid plaintiff in the court here, becauſe he ſaith, that he the ſaid plaintiff long before, and at the time of ſuing out the writ of attachment of privilege hereinafter mentioned was, and continually ſince hath been, and yet is, one of the attornies of the court of our lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid; and being ſo an attorney as aforeſaid, he the ſaid plaintiff, before the day of exhibiting his ſaid bill againſt the ſaid defendant, to wit, on the twenty-eighth day of November, in the twentieth year of the reign of our ſovereign lord the now king, according to the liberties and privileges for ſuch attornies of the ſame court from time immemorial uſed and approved in the ſame court, ſued and proſecuted out of the court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter, a certain writ of our ſaid lord the king of attachment of privilege againſt the ſaid defendant, directed to the then ſheriff of Middleſex, by which ſaid writ the ſaid lord the king commanded the then ſheriff of Middleſex aforeſaid that he ſhould attach the ſaid defendant and John Doe, if they might be found in his bailiwick, and ſafely keep them, ſo that he might have their bodies before our ſaid lord the king here, to wit, on next after then next following, to anſwer to the ſaid plaintiff, one of the attornies of the court of the ſaid lord the king, before the

Replication to a plea like the laſt, *viz.* that the plaintiff is an attorney of B.R. and as ſuch impleaded the defendant in the king's bench by attachment of privilege.

the king himself here, to wit, at Westminster aforesaid, according to the liberties and privileges of the same court for such attornies time out of mind used and approved of in the same court, in a plea of trespass, and also to a bill of the said plaintiff against the said defendant for forty pounds upon promises, according to the custom of the said court of the said lord the king, before the king himself to be exhibited, and that he should have there then that writ; at which day, before our lord the king at Westminster, came the said plaintiff in his proper person, and the said defendant in his proper person also appeared in the same court here to answer to the said plaintiff according to the exigency of the said writ; and the then sheriff, to wit, J. W. esquire, and R. A. esquire, returned to the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, that by virtue of the said writ he had taken the body of the said defendant, and had his body ready before the said lord the king at Westminster at that day, as by the said writ the said sheriff was required, as by the record thereof remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, manifestly appears: and the said plaintiff further says, that the said writ of attachment of privilege, prosecuted as aforesaid by the said plaintiff, was prosecuted by him the said plaintiff, as to the said defendant, with intent to implead the said defendant for the causes of action in the said declaration above specified, and to cause him to appear in the said court here, and upon his said appearance to declare against him for the several causes of action above mentioned, according to the course and custom of the said court; and the said plaintiff, according to such his intention, afterwards, to wit, in Hilary Term, in the twentieth year aforesaid, declared by bill against the said defendant, in manner and form aforesaid; and this, &c.: wherefore, &c.; and that the said defendant may answer to the said bill of the said plaintiff, &c.

D. POOLE.

Plea to the Jurisdiction. Privilege of an attorney of B. R. pleaded to an action brought against him in that court as a common person.

AND the said defendant in his own person comes and (*defends the wrong and injury, &c. and says, that the court here ought not to take nor will take cognizance of the plea aforesaid, because he*) says, that he the said defendant now is, and at the time of exhibiting of the bill of the said plaintiff against him the said defendant, and long before, was one of the attornies of the court of our lord the now king, before the king himself here, to wit, at Westminster aforesaid, as by the roll of the attornies of this court here fully appears, and that as an attorney for many of the king's subjects he is now prosecuting and defending divers suits and actions in the said court of our said lord the king, before the king himself here, and that he the said defendant, or any other attorney of this court, whilst he or they respectively are or is so prosecuting or defending any causes or suits in this court, by an antient and laudable custom, used and approved in the said court from time immemorial, ought not, nor ought any of them, contrary to their will to be drawn into or compelled to answer

answer any bill or bills to be exhibited against him or them as in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, or in any other manner whatsoever, except by bill or bills to be exhibited in this court against him or them as an attorney or attornies of this court, in all pleas, plaints, and demands, which do not relate to his majesty's person (pleas relating to freeholds, felonies, and appeals, only excepted); and this he is ready to verify, *and therefore apprehends, that the court here will not nor ought to take cognizance of the action aforesaid here depending against him, &c.*: wherefore he prays judgment if he ought to be compelled to answer to the said plaintiff in his said plea in the said court here.

W. DAVY.

Quære, If this plea will not be more properly pleaded by making the alterations in Italic. Vide 3. Black. Com. 298. Co. Lit. 127. Salk. 217. Ld. Ray. 282.

N. B. A replication to the above plea should conclude to the record, and not to the country, for no one can be an attorney but by the act of the court, which must be entered on record; and the Court will not suffer a jury to enquire into their own act. 1. Stra. 76.

AND one William Lee, gent. against whom the said plaintiff hath exhibited his bill as one of the attornies of this court here, in his proper person comes and defends the wrong and injury when, &c. and prays judgment of the said bill, because he says, that the said defendant is not, nor ever was, one of the attornies of the court of our lord the king, before the king himself at Westminster aforesaid, as he the said plaintiff hath above supposed; and this he the said defendant is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

W. WHITAKER.

Plea in abatement of the person, that defendant is not an attorney, as alledged in the bill.

S. P. Imp. Pr. B. R. 231.

AND the said Mary, in her proper person, comes and prays judgment of the bill aforesaid, because she says, that she now is, and before the day of exhibiting the bill of the said plaintiff was, and ever since hath been, covert of one William Mand, then and still being her husband, to wit, at, &c. aforesaid, which said William Mand is now living and in full life, to wit, at, &c. aforesaid; and this she is ready to verify: wherefore she prays judgment of the said bill prosecuted against the said Mary as a feme sole in the manner aforesaid, and that the said bill may be quashed, &c.

Drawn by MR. WARREN.

Plea in abatement of the person [illegible] defend[illegible] ant's cove[illegible]

Coverture ought to be pleaded in abatement, not in bar, 1. Lutw. 22.

In the king's bench—Affidavit of truth of plea.

Mary Mand, of, &c. married woman, the defendant above named, maketh oath, and saith, that the plea hereto annexed is true in substance, in matter of fact.

Sworn, &c. MARY MAND.

AND

Coverture of the defendant pleaded in bar

AND the faid Anne, in her own perfon, comes and defends the wrong and injury when, &c and fays, that the faid plaintiff ought not to have or maintain his aforefaid action againft her, becaufe fhe faith, that fhe the faid defendant, before and at the time of the making the faid feveral promifes and undertakings in the faid declaration mentioned *was, and from thence hitherto hath been, and ftill is,* the wife of, and married to, one John Smith *(fince deceafed), and which faid John Smith is now living,* to wit, at, &c.; and this, &c.: wherefore, &c. if, &c. *Drawn by* Mr. WARREN.

Plea in bar, that the plaintiff ne unques accouple in loial matrim. pleaded to an action of trefpafs vi et armis in bar.

AND the faid Jofeph and Sarah, by Richard Kelfall their attorney, come and defend the force and injury when, &c. and fay, that the faid plaintiffs ought not to have or maintain their aforefaid action againft them, becaufe protefting, that the faid Sarah is not guilty of the faid trefpaffes and affaults in the faid declaration mentioned, or of either of them, in manner and form as the faid plaintiffs hath above thereof complained againft them the faid defendants; for plea in this behalf they the faid Jofeph and Sarah fay, that the faid Edward and Ann were never coupled or joined together in lawful matrimony; and this the faid defendants are ready to verify: wherefore they pray judgment if the faid Edward and Anne ought to have or maintain their aforefaid action againft them, &c.

Drawn by V. LAWES.

Plea to the perfon of the plaintiff that he is an alien born and an enemy.

S. P. 1. Mod. Ent. 9. 1. Litt. Ent. 1.

AND the faid defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and faith, that the faid plaintiff is an alien born, to wit, at Clera, under the allegiance of the French king, an adverfary of our lord the now king, and of parents adhering to his faid adverfary; and the faid plaintiff entered into this kingdom without the fafe-conduct of the faid lord the now king; and this he the faid defendant is ready to verify, where, when, and as the Court fhall award: wherefore he prays judgment if the faid plaintiff ought to be anfwered to his faid bill, &c. [Annex affidavit or where the plaintiff was born, and that he was not naturalized to the defendant's knowledge.] R. DRAPER.

Vide Morg. Dig. 38, &c. 2. Stra. 1082. Co. Lit. 129. Salk. 46. 1. Mod. Ent. 27.

Replication to the above plea, that the plaintiff refided in thefe kingdoms in time of peace, and ftill refides, under the protection and licence of our lord the king.

And the faid plaintiff, notwithftanding anything above pleaded by the faid defendant, fays, that he the faid plaintiff ought to be anfwered to his faid bill, becaufe he faith, that long before a war was proclaimed between the faid French king and our faid lord the now king, and in time of peace between the faid kings, to wit, on the firft of July 1727, the faid plaintiff was and refided in this kingdom of Great Britain, to wit, at Weftminfter aforefaid, and continually ever fince, and at the time of the making of the faid promiffory note and the faid feveral promifes in his faid declaration mentioned, and

and at the time of exhibiting his said bill, remained and resided, and now doth remain and reside, in this kingdom of Great Britain, by the licence and under the protection of our said lord the now king of Great Britain, to wit, at Westminster aforesaid; and this, &c.: wherefore, &c. and that the said defendant may answer his bill and declaration, &c. S. S. SMYTHE.

Vide 1. Bac. Ab. 84. Morg. Dig. 38, &c. Ld. Raym. 283. 853. 2. Stra. 1082. Salk. 46. Farresley, 150.

Plea in abatement (by defendant sued as heir) of *infra ætatem.*

AND the said Sarah Hill, the daughter and heir of the said William Pritchard in the said bill above mentioned, by W. E. her guardian, comes and saith, that she the said Sarah is within the age of twenty-one years, to wit, of the age of twenty years and eight months, and no more, to wit, at, &c. aforesaid; and this, &c.: wherefore she conceives that she during her minority ought not to be compelled to answer the said plaintiff in this plea aforesaid, and prays that the said plea may stay and be respited until the full age of her the said S. H. &c. T. SEWELL.

Another plea like the last to debt on bond, and an heir of obligor. Parol demur, defendant being under age. H. T. 32. 92.

AND the said Sarah Periam, by Anne P. her guardian (who is admitted by the court of our lord the king, before the king himself here, to defend for the said Sarah, being an infant under the age of twenty-one years), comes and defends the wrong and injury when, &c. and the aforesaid Sarah saith, that she is within the age of twenty-one years, to wit, of the age of twenty years and six months, and no more; and this she is ready to verify: wherefore she doth not intend that she, during her aforesaid minority, will be compelled to answer the said plaintiff of the debt aforesaid, and prays that the aforesaid plea may from henceforth remain until the said Mary be of full age, &c.

Replication to the above plea.

And because the said plaintiff doth not deny the said plea of the said Sarah, therefore let the plea of the said plaintiff, and all proceedings thereon, be stayed until the full age of the said Sarah, &c.

Abatement of the writ and count in debt on bond, that two were jointly bound, and only one sued.

AND the said defendant, by R. B. his attorney, comes and defends the wrong and injury, &c and prays judgment of the plaint [or writ aforesaid], *and the declaration thereon founded*, and pleads that he, together with one J. G. of, &c. on, &c. to wit, at, &c. became jointly bound to the said plaintiff by the said writing obligatory in the said declaration mentioned in the sum of, &c. to be paid to the said plaintiff when they the said defendant and J. G. should be thereto afterwards requested, and that the said J. G. as well as the said defendant, signed, sealed, and delivered the said writing obligatory (as by the said writing obligatory sealed with the respective

spective seals of the said defendant and J. G. and now brought here into court, the date whereof is the day and year in that behalf abovementioned) more fully and at large appears); and the said defendant further saith, that he did not bind himself to the said plaintiff by the said writing obligatory without the said J. G. but that they the said defendant and J. G. bound themselves jointly and not severally by the said writing obligatory, and that the said J. G. is still living and in full life, to wit, at, &c. aforesaid; and this he the said (defendant) is ready to verify: wherefore, inasmuch as the said J. G. is not named in *the said plaint (or writ), nor in the declaration thereon founded, he* the said defendant prays judgment, and *that the said plaint (or writ), and the declaration thereon founded*, may be quashed, &c.

Abatement of an action of *assumpsit* in B. R. declaring against one only on a PARTNERSHIP debt.

S. P. Imp. Prac. 232.

AND the said defendant, in his own person, comes and defends the wrong and injury, &c. and prays judgment of the bill *(or writ)* aforesaid, because he saith, that the said several promises and undertakings in the said bill mentioned, if any such were or was made, were, and each of them was, made as well by one A. E. as by the said defendant, jointly, and not by the said defendant separately and solely, to wit, at, &c. aforesaid; and that the said A. E. at the time of the exhibiting of the said bill of the said plaintiff against the said defendant was, and still is, living and in full life, to wit, at, &c. aforesaid; and this, &c: wherefore, inasmuch as the said R. E. is not named in the bill aforesaid, he the said defendant prays judgment, and that the same bill may be quashed, &c.

Plea of a former suit depending for the same cause of action in the same court.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and prays judgment of the said bill, because he says, that the said bill was exhibited in this court here on Thursday next after five weeks of Easter, in this same Term, and not before, and that heretofore, to wit, in this same Easter Term, in the same twenty-first year of the reign of our sovereign lord the now king, in this court of our lord the king, before the king himself here (the said court then and still being held at Westminster, in the county of Middlesex), he the said plaintiff exhibited his certain other bill against him the said defendant in a certain plea of trespass on the case on promises, for the non-performance of the very same promises and undertakings above mentioned, then and there complaining by the said bill against the said defendant in that plea; for that whereas [here set out the declaration *verbatim* till you come to the conclusion]: nevertheless the said defendant, in no wise regarding his said several promises and undertakings in form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in that behalf, hath not paid the said several sums of money, nor either of them, nor any part thereof (although, &c.), but the said defendant hath hitherto altogether refused, and did

did then refuse, to pay the same to the said plaintiff, and that the same were still unpaid, to the damage of the said plaintiff of two hundred pounds, and therefore he brought that suit, &c. as by the record and proceedings thereof, now remaining in the court here, to wit, at Westminster aforesaid more fully appears: and the said defendant further saith, that the said Edward Chapman, the plaintiff in the said former plea, and the said Edward Chapman, the plaintiff in this now present suit, are the same person, and not other or different persons, and that the said Thomas Warren, the defendant in the said former plea, and the said Thomas Warren, the defendant in this plea, are one and the same person, and not different persons, and that the several causes of action mentioned in the said bill in the said former suit and the said several causes of action mentioned in the said bill in this present and latter suit, are the same causes of action, and not divers or different causes of action: and the said defendant further saith, that the said former suit so brought and prosecuted against him the said defendant by the said plaintiff is still pending in the said court here, not discontinued, tried, or determined; and this, &c.: wherefore he prays judgment of the said bill in the said latter and present suit pending the said former suit, and that the same may be quashed, &c. N. JONES.

A replication of *nul tiel record* to such plea as the last.

AND the said plaintiff says, that the said bill of the said plaintiff, by reason of anything by the said defendant in pleading alledged, ought not to be quashed, because he says, that there is not any such record of such former plea now depending in the said court against the said defendant, by the name of, &c. remaining in the said court of our said lord the now king, before the king himself, at Westminster aforesaid, as the said defendant hath above in pleading alledged; and this he the said defendant is ready to verify: wherefore he prays judgment, and that the said bill now here in this Term against the said defendant may be adjudged good, and that the said plaintiff may answer over, &c. *Drawn by* Mr. WARREN.

N. B. This replication was copied from other pleadings. This second action was commenced after judgment for quashing the first action was entered on the roll, which was carried in.

Plea to the jurisdiction of B.R. that the *venue* is within the principality of Wales and that the defendants ought to be impleaded in the court of great session.

JONES AND ANOTHER *against* JONES. } AND the said defendants, in their proper persons, come and defend the force and injury, and say, that the said county of Denbigh is one of the twelve counties within the principality and dominion of Wales, within which said county there is, and at the time of exhibiting the said bill of the said plaintiff, and long before that time, was, a certain court of our lord the present king of great session, holden for the said county of Denbigh, before certain justices of the same court there, and that all and singular pleas and actions, as well real as personal, arising within the same county,

county, are, and at the time of exhibiting, &c. were, and of right ought to be, pleaded and pleadable within the ſaid county of Denbigh, before the juſtices of the ſaid court of great ſeſſion there for the time being, and not here in the court of our lord the king before the king himſelf; and that they the ſaid defendants, and alſo the ſaid plaintiff, at the time of exhibiting, &c. and before, were and from thence hitherto have been reſident and commorant within the ſame county, that is to ſay, at Ruthin in the ſaid county; and this they are ready to verify to the ſaid court here, &c.: wherefore, ſince the cauſe of action aforeſaid ariſes within the ſaid county of Denbigh, within the principality or dominion of Wales, the aforeſaid defendants pray judgment, if the court of our lord the king here will or ought to have further cognizance of the plea aforeſaid. D. POOLE.

Plea in abatement, that plaintiff was no baronet when he ſued in the ſtile of knight and baronet.

AND the aforeſaid John, by his attorney, comes and craves oyer of the aforeſaid writs of *ſcire facias* ſued out againſt him, and they are read to him, &c. which being read and heard, the ſaid defendant prays judgment of the writs aforeſaid, becauſe he ſays, that the ſaid plaintiff, on the day of ſuing out the ſaid writs of *ſcire facias*, was not a baronet, as by the writs aforeſaid is above ſuppoſed; and this he is ready to verify: wherefore, inaſmuch as the aforeſaid plaintiff is called by the aforeſaid writs knight and baronet, the aforeſaid defendant prays judgment of the writs aforeſaid. EDWARD SANDERS.

Plea, that defendant is an *attorney* of B. R. and ought not to be declared againſt in the cuſtody of the marſhal.

AND Thomas Mordaunt, in his proper perſon, comes and prays judgment of the bill of the ſaid George Stamford, becauſe he ſays that he the ſaid Mordaunt, long before the exhibiting of the bill of the ſaid G. S. againſt the ſaid defendant, and at the time of exhibiting of the ſame, was, and ſtill is, one of the attornies of the court of our ſaid lord the king, before the king himſelf, as aforeſaid; and that he then was and now is proſecuting and defending many pleas and ſuits for many true and faithful ſubjects of our lord the king, in the ſaid court of our ſaid lord the king, before the king himſelf as their attorney; and the ſaid defendant further ſays, that he and all others the attornies of the ſaid court of our ſaid lord the king, before the king himſelf as aforeſaid, proſecuting ſuits and pleas for their clients in the court of our ſaid lord the king, before the king himſelf, by an antient and laudable cuſtom uſed and approved of according to the laws and cuſtoms of the realm, and the liberties of the ſame court of our ſaid lord the king before the king himſelf, have been uſed, and ought, in all perſonal pleas wherein they are impleaded in the ſaid court of our ſaid lord the king, before the king himſelf, at the ſuit of any ſubject of our ſaid lord the king, to be impleaded only by bill exhibited in the ſaid court of our ſaid lord

lord the king, before the king himſelf, againſt ſuch attornies as are preſent in the ſame court, in their own proper perſons, and not as being in the cuſtody of the marſhal of the marſhalſea of our ſaid lord the king, before the king himſelf: wherefore, inaſmuch as the ſaid defendant is not impleaded in this action as one of the attornies of the ſaid court of our ſaid lord the king, before the king himſelf, he prays judgment of the ſame bill, and that the ſame may be quaſhed, &c. G. Wood.

AND the ſaid James Atwood, againſt whom the ſaid William hath ſued out his original writ by the name of Thomas A. comes in his proper perſon, and ſays, that he was baptized by the name of James, and that he hath been always, from the time of his baptiſm, hitherto called and known by the name of James A. to wit, at D. aforeſaid, in the county aforeſaid; without this, that he the ſaid now defendant, at the time of ſuing out the ſaid original writ of the ſaid William, or at any time before or after, hitherto hath been or now is called or known by the name of *Thomas*, as by the ſaid original writ is above ſuppoſed; and this he is ready to verify: wherefore he prays judgment of the ſaid original writ, and that the ſame may be quaſhed, &c. — Plea, miſnomer of defendant's chriſtian name.

N. Grose.

AND the ſaid R. in his proper perſon, comes and defends the wrong and injury, and prays judgment of the ſaid bill of the ſaid Elizabeth, becauſe he ſays, that the ſaid Elizabeth before and at the time of exhibiting the bill of the ſaid Elizabeth, was under coverture of one Samuel Meſs, her huſband; which ſaid Samuel Meſs is ſtill living, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and this, &c. wherefore, inaſmuch as the ſaid Samuel Meſs is not named in the ſaid bill, the ſaid R. prays judgment of the ſaid bill, and that the ſame may be quaſhed, &c. — Plea, that plaintiff is under coverture.

A. Chambre.

By ſtatute 4. *Anne*, c. 16. the truth of this plea (being a dilatory one) muſt be proved by affidavit, and ſome probable cauſe ſhewn to the Court to believe it true. A. C.

AND the ſaid E. in her proper perſon, comes and defends the wrong and injury, and as to all the promiſes and undertakings in the ſaid bill of the ſaid F. except the promiſes and undertakings in the third count of the ſaid bill mentioned, as far as the ſame relates to the ſum of five hundred and eighty-ſeven pounds eleven ſhillings, part of the ſaid ſum of one thouſand two hundred pounds in the ſaid third count mentioned, the ſaid E. prays judgment of the ſaid bill of the ſaid F. and that the ſame — Plea as to all, except, &c. that the promiſe, if any, were made by the defendant and one T. K. *jointly*: traverſing that they were made by defendant *alone*.

same may be quashed; because she says that the said promises and undertakings in the said bill mentioned, except as aforesaid, if any such were made, and each and every of them was made by the said E. and one T. K. *jointly*, which said T. K. is still alive, to wit, at L. aforesaid, in the parish and ward aforesaid; *without this*, that the said promises and undertakings, except as aforesaid, or any of them, was or were made by the said E. alone, as the said F. has above in his said bill alledged; and this, &c.: wherefore as the said T. K. is not named in the bill of the said F. the said E. as to the said promises and undertakings (except as aforesaid), prays judgment of the said bill, and that the same may be quashed, &c. And as to the residue *non assumpsit*.

T. Burrough.

Replication that they were made by the defendants separately.

And the said F. as to the said plea of the said E. as above pleaded as to all the said promises, &c. and says, that the said bill of the said F. ought not, by reason of any thing in that plea alledged, to be quashed, as is therein prayed, because he says, that the said promises and undertakings in the said bill (except as aforesaid) were made by the said E. separately, and not jointly by the said E. and the said F. K. in that plea mentioned (*modo & formâ*); and this he prays may be enquired of by the country, &c.

In replevin, that the *property is in himself*, and traverses plaintiff's property. Vide Co. Ent. 31. b. 1. Comyns, 57 & 5th. 293. Pleas in abatement ought to be averred, 4. Com. 81. 1. Vent. 264. Lutw. 1466. Conclusion of a plea in abatement, 1. Com 72, 73.

AND the said defendant, by his attorney, comes and defends the force and injury when, &c. and says that the said cattle, goods and chattels, at the time of the taking thereof were the proper goods and chattels of him the said defendant; *without this*, that the said cattle, &c. at the same time when, &c. were the property of the said P. G. as by the said declaration is above supposed; and this he is ready to verify: wherefore he prays judgment of the writ aforesaid, and that the same may be quashed, &c.

Attorney sued in B.R pleads that he is an attorney of C. B. 1. Com. 3. 2. Bulst 207. Lutw. 195. 2. Salk. 2.

AND the said defendant, in his proper person, comes and defends the force and injury, and says, that he the said defendant, long before the time of exhibiting of the said bill of the said P. G. and at the same time and continually afterwards was and yet is one of the *attornies* of the court of our lord the king, of the bench at Westminster, in the county of Middlesex, as by the *process* (*a*) under the seal of the same court of the bench to this

(*a*) If privilege of an attorney be pleaded with a writ, it is conclusive; if without, it is a good plea, but then a certiorari shall go to certify whether he be an attorney or not, Salk. 545. Com. 34. In pleas to the jurisdiction or to the person, it is wrong to say when, &c for by those words the jurisdiction and ability of the person is admitted. Inst. Cler. vol. 3. p. 10.

plea

plea annexed, more fully appears, attending in his ſaid office in the ſame court there; and that he, for all the time aforeſaid, hath proſecuted and defended, and ſtill proſecutes and defends divers pleas and cauſes of divers and many ſubjects of our ſaid lord the preſent king, in the ſame court of the bench aforeſaid, as their attorney there; and the ſaid defendant ſays, that he and all other attornies of the ſame bench, proſecuting and defending for their clients in the ſame court, by laudable and antient cuſtom, and according to the law of this kingdom of England, and the liberties and privileges of the ſame court of the bench aforeſaid, uſed and approved from time whereof the memory of man is not to the contrary, ought not nor at any times paſt have been accuſtomed, according to the liberties and privileges of the ſaid court of the bench aforeſaid, for the whole time aforeſaid uſed and approved, to be drawn or compelled againſt their will to anſwer before any juſtice or miniſter of our ſaid lord the king, or other juſtices whatever in any court (except before the juſtices of our lord the king of the bench aforeſaid, at Weſtminſter aforeſaid) in or upon any pleas or plaints (pleas of frank tenement, felonies and appeals only excepted); and this he is ready to verify: wherefore he prays judgment, if he ought to be compelled to anſwer to the ſaid plea here in court, &c. F. NORTON.

Privilege of attorney preferred to that of univerſity.
Litt. Rep. 304.
Hardw. 505 to 510.
Godb. 404.
1. Show. 352.
1. Com. 73.
3. Mod. 146.

AND the ſaid defendant, in his proper perſon, comes and defends the force and injury, and ſays, that the ſaid county of Cheſter is, and from time whereof the memory of man is not to the contrary, hath been a county palatine, and there now are and for all the time aforeſaid have been juſtices there, and that all and ſingular pleas for the recovery of manors, meſſuages and tenements lying and being within the ſame county, have been for all the time aforeſaid, and ſtill are pleaded and pleadable within the ſaid county of Cheſter before the juſtices there for the time being, and not here in the court of our lord the king, before the king himſelf; and this he is ready to verify: wherefore, ſince the plea aforeſaid is brought for the recovery of the poſſeſſion of the manors, meſſuages, lands and tenements aforeſaid within the ſaid *county palatine*, the ſaid defendant prays judgment, if the court of our lord the king here will or ought to have further plea or cognizance of the plea aforeſaid. E. BOOTLE.

Plea, that the cauſe of action accruedwithin a *county palatine.*

It is wrong to add when, &c.
Inſt. Leg. 120.
See the above plea, 1. Com. 3. 4. Inſt. 212.
Robinſon Ent. 1.
Brown, 473.

AND the ſaid defendants, in their proper perſons, come and defend the force and injury, when, &c. and ſay, that the county of Carmarthen is one of the twelve counties within the principality and dominion of Wales, within which ſaid county there now is, and at the time of exhibiting the ſaid bill of the ſaid plaintiff, and long before that time, was a certain court of our lord the king's of great ſeſſion holden before certain juſtices of the ſame

Plea in treſpaſs, to the juriſdiction of B. R. that the cauſe of action aroſe in the *great ſeſſions in Wales.*
2. Mod. fo. 10, 11, 12, 13.

See the above pleas, and qu. Should not the words *when, &c.* be omitted here?

court there for that county, and that all and singular pleas and actions, and cognizance of pleas and actions, as well real as personal, arising within the said county of Carmarthen, are and at the time of exhibiting the said bill of the said plaintiff, were, and of right ought to be pleaded and pleadable, and tried, determined, and decided in the said court of our said lord the king, of great session holden within the said county of Carmarthen, before the said justices of the said lord the king, of great session there for the time being, and not here in the court of our lord the king, before the king himself; and that the said defendants and the said plaintiff, at the said time when the trespass aforesaid is supposed to be committed, were, and each and every of them was, and continued from thenceforth and hitherto have, and each and every of them hath been resident and commorant in the said county of Carmarthen, and that the cause of action in the said declaration mentioned, if any, accrued to the said P. G in the said county of Carmarthen, within the principality or dominion of Wales, to wit, at the parish of aforesaid, in the said county of Carmarthen, and not at Ross, in the county of Hereford, in the said deed mentioned, or elsewhere out of the said county of Carmarthen, in the principality or dominion of Wales; and this they are ready to verify: wherefore they pray judgment, if the said court of our said lord the king here will or ought to have further cognizance of the plea. C. PRATT.

Plea, that the plaintiff dead and no such person in being when the bill was exhibited.

AND the said Richard, in his proper person, comes and prays judgment of the aforesaid bill, because he says, that the said James Burley, at whose suit the same bill is above supposed to be exhibited against him the said Richard at the time of exhibiting that bill, and long before, was dead, and that there is not, nor at the time of the exhibiting of the aforesaid bill against him the said Richard, was there any such person in being as the said J. B. as in and by the aforesaid bill is above supposed; and this the said Richard is ready to verify: and therefore he prays judgment of the said bill, and that the same may be quashed, &c.

R. DRAPER.

Plea of misnomer of defendant's *christian* name.

Lutw. 2. 1.
Ray. 509.
Show. 394.
Comb. 1038.
Will. 413.
Salk. 6.
6. Mod. 116.

AND George Holder, against whom the aforesaid bill is exhibited by the name of Richard Holder, by his attorney, comes and defends the wrong and injury, when, &c. and saith that he now is, and from the time of his baptism, hitherto has been called and known by the name of *George* Holder; without this, that he the said George Holder was ever called or known by the name of Richard Holder, as by the bill aforesaid is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the said bill may be quashed.

AND

AND the aforesaid T. says, that the aforesaid cottage in which &c. situate and being in the said waste called Conygar Hill, in the said declaration above mentioned, is held of R. C. esq. as of his manor of W. in Herefordshire; which said manor of W. is, and from time whereof, &c. was of *antient demesne* of the crown of our lord the king, and that the aforesaid cottage is, and for all the time aforesaid was pleaded and pleadable in the court of the same manor by patent writ of our lord the king, of right close only, and not elsewhere or otherwise; and this he is ready to verify, as the Court here shall consider of, &c.: wherefore he prays judgment, if the court of our lord the king now here will further consider thereof, &c. R. DRAPER.

Plea of antient demesne, and that the lands are pleadable in the *court of the manor, &c.* 1. Com. 21.

AND the said defendant, by his attorney, comes and defends the force and injury, and prays judgment of the declaration aforesaid, because he says, that all the tenements and premises in the declaration aforesaid specified, in which the trespass and ejectment are above supposed to be done, are held of the manor of K. in L. in the county of Lincoln; and the said manor, &c. are, and from the time whereof, &c. have been of *antient demesne* of the crown of the king of England, and now of Great Britain; and that all actions for any trespass and ejectment done in or concerning the said tenements and premises in the court of the said manor, &c. and not elsewhere, for all the time aforesaid have been used and accustomed, and ought to be tried and determined; and this he is ready to verify as the Court shall think proper: wherefore he does not intend that the Court will take cognizance of the said plea, &c.

Plea, that the lands are held of *antient demesne.*

AND the said A. in his proper person, comes and says, that this court ought not to have further cognizance of the plea aforesaid, because he says, the cause of action aforesaid (if any accrued to the said B.) accrued to the said B. *out of the jurisdiction of this court, to wit, at T. in the county of N. and not at Ely* in the said declaration named, or elsewhere, within the jurisdiction of the court; and this the said A. is ready to verify: wherefore he prays judgment, if this Court can or will have further cognizance of this plea, &c.

Plea, that the action arose out of the *jurisdiction of Ely.*

AND the said defendants, by their attornies, come and defend the force and injury, when, &c. and say, that the said plaintiff is an alien, born in the kingdom of Spain, under the allegiance of the king of Spain, an adversary of our lord the now king, of mother and father enemies of our said lord the now king, and adhering to his adversary; and that the said S. entered into this kingdom of Great Britain without the safe-conduct of the said lord the now

Plea, that plaintiff is an *alien* enemy.

Carth. 229, 230.
Litt. 198.
Instit Leg. 528.
2. Ro. Ent. 7.
Clift's Ent. 4.
2. Ld. Ray. 1243.

now king; and they are ready to verify here; when, and as the court here shall award: wherefore they pray judgment, if the plaintiff ought to be answered to his said bill.

Replication protesting that he is not an alien, says he is here under the *licence* and *protection* of the king.

And the said plaintiff says, that he, notwithstanding any thing by them the said defendants in pleading alledged ought to be answered to the said bill, protesting that he was not an alien born in the kingdom of Spain, under the ligeance of the king of Spain, protesting that he was born at Muhlhaven in Germany, under the dominion of the Emperor of Germany; for plea the said S. saith that he, long before the said time when, &c. to wit, on the first day of May, A. D. 1743, and continually from thenceforth to and at the said time, when, &c. was under the *licence and protection* of the lord the now king of Great Britain, in that part of Great Britain called England, to wit, at Maidstone aforesaid, in the county aforesaid, and continually from thenceforth hath remained and now doth remain under the licence and protection of the said lord the now king of Great Britain, &c. to wit, at Maidstone aforesaid, in the county aforesaid; and this he is ready to verify: wherefore he prays judgment, and that he may be answered to his said bill.

Plea, *another action depending* in the Common Pleas.
2. Salk. 715.
Pract. Reg. 7. 5.
8. Lilly's Ent. fo. 2.
Combe *v.* Pitt, 3. Burr. 14. 23.

AND the said H. comes and defends the force and injury, and prays judgment of the said declaration, because he says that said G. in the Term of St. Hilary, in the eleventh year of the said lord the king, of the bench here, to wit, at Westminster aforesaid, impleaded the said H. by the name of, &c. in a plea of trespass on the case, declaring against the said H. in the same court in the said plea; that whereas, &c. (insert the declaration); which said plea still depends in the said court of the said lord the king of the bench, not determined or discontinued, as by the record and proceedings thereof remaining in the said court of the said lord the king of the bench here to wit, at Westminster aforesaid, manifestly appears. And the said H. further says, that the said cause of action above mentioned and specified in the said herein-recited declaration of the said G. and the said cause of action above mentioned and specified in the declaration of the said G. to which he now here pleads, are one and the same cause of action, and not divers; and this he is ready to verify: wherefore he prays judgment of the said declaration of the said G. to which he now here pleads, and that the same may be quashed.

Salk. 210.
Ld. Ray. 1205.
See page 64 for similar plea.

Plea in trespass, that plaintiffs were *joint tenants* with others who are not named in the declaration.

AND the defendant, by his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says, that the said plaintiff, neither at the time when, &c. nor

In trespass, *quare clausum fregit*, it is a plea in abatement to say plaintiff is tenant in common with another, and cannot be given in evidence on the general issue, as it may where one tenant in common brings trespass against the other, 1. Vent. 214. 1. Salk. 32.

ever

ever since, had, nor hath any thing in the said close in which, &c. nor in the said trees and underwood in the said bill mentioned to have been there growing, nor in any of them, nor in any part thereof, nor in the said goods and chattels in the bill mentioned, nor in any of them, nor in any part thereof, but in common jointly and undivided with T. M. esq. and R. F. gent. who are both still alive, to wit, at the parish of D. aforesaid; and this the said defendant is ready to verify: wherefore, inasmuch as the said T. M. and R. F. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed.

Plea by an attorney of C. B. that he is impleaded by *original writ*, and not by bill. He cannot plead thus when sued as executor.— *N. B.* It must be pleaded he was an attorney at the time of suing out the writ, or it is bad on general demurrer. Vide Lilly's Ent. Skin. Rep. 582. Affidavit of being admitted and enrolled, and not forejudged, to be annexed.

AND the said A. in his proper person, comes and says, that he ought not to be compelled to answer the said original writ, because he says, that he is, and on the day of suing of the said original writ, and long before, was one of the attornies of the court of the lord the king of the bench here, and that in the same court here there is, and from time whereof, &c. there hath been a custom used and approved of in the same court, that no attorney of the said court hath, against his will, been compelled to answer any person in any personal action prosecuted in the same court here by original writ sued out (which have not concerned the king), unless he hath first been forejudged from his office of an attorney of this court, upon a bill exhibited here to the justices of our said lord the king of the bench against such attorney and affiled in the same court; and the said A. in fact says, that he hath not been forejudged from the office of an attorney of this court, and that he is impleaded by the said original writ against his will, and against the custom aforesaid; and this, &c.: whereupon, as the said A. is an attorney of the said court, and on the day of suing out the said original writ, and long before, was an attorney of the said court, he prays his privilege aforesaid to be allowed and adjudged to him, and that he may not answer the original writ for the cause aforesaid. W. CHAPPLE.

Plea, that defendant was *commorant* in the parish of St. James, traversing his commorancy at L.

AND the said T. W. in his proper person, comes and defends the wrong and injury, and prayeth judgment of the said writ of the said T. because he says, that he the said T. W. at the time of suing forth the said original writ of the said T. and long before, was inhabiting, resident, and commorant in the parish of St. James, in the liberty of Westminster, in the county of Middlesex; without this, that the said T. W. was ever inhabiting, resident, or commorant at London aforesaid, from the time of his nativity, as the said T. by his said writ hath above supposed;

and this he is ready to verify: wherefore he prays judgment of the said writ, and that the same may be quashed.

Replication thereto.

And the said T. saith, by any thing by the said T. W. above in pleading alledged, the said writ ought not to be quashed, because he says, that some short time before the issuing of the said writ, the said T. W. was commorant in L. aforesaid, to wit, upon the twelfth of November 1738, at the parish and ward aforesaid; and this he prays may be enquired of by the country: and thereupon the said T. W. prays leave thereupon to rejoin in fifteen days from Easter Day, and he hath it, &c. The same day is given to the aforesaid T. here, &c.

Dies datus to rejoin.

Plea, that defendant is named without his *addition*.

AND the said James, in his own proper person, comes and defends the wrong and injury, &c. and saith, that he the said T. at the time of suing forth the original writ of the said W. in this behalf, and long before, was and still is a *carver*, and of the trade, art, and mystery of a carver, and during all the said time hath used and exercised the said trade, art, and mystery of a carver, to wit, at Westminster aforesaid; and the said James is not, nor ever was, of any other estate, degree, or mystery: wherefore, inasmuch as he the said James is not named in the said writ by the said addition of a *carver*, he the said James prays judgment of the same writ, and that the same may be quashed.

A like plea. 1. Salk. 7. 50. 55. 1. Hob. 284. 1. Vent. 151. Rast. 108. 289.

AND the said W. C. innholder, against whom the said James hath brought his original writ by the name of W. C. late of Wales in the county aforesaid, comes in his proper person, and defends the force and injury, and prays judgment of the said writ, because he says, that he the said W. C. on the day of suing forth the said original writ of the said James, and long before was, and yet is, an innholder; and this he is ready to verify: wherefore, for that the said W. is not named by the said original writ of the said Jane by the name of William Coward *innholder*, as he ought to be, according to the form of the statute of Additions in the name of the defendant lately made and provided, the said William prays judgment of the same writ, and that the same writ may be quashed, &c. E. Bootle.

1. H. 5.

Replication thereto, that plaintiff sued out original against defendant by his proper addition.

And the said Jane saith, that, by any thing by the said W. C. above in pleading alledged, her said writ ought not to be quashed, because she saith, that the said Jane, by the name of Jane Noble heretofore, to wit, upon the eighteenth day of April, in the 12th year, &c. sued forth out of the lord the king's high court of chancery (the said high

high court of chancery then being at Weftminfter, in the county of Middlefex) her faid original writ againft the faid W. C. by the name of W. C. late of Wales, in the faid county of S. innholder, in the faid plea of trefpafs on the cafe directed to the then fheriff of S. which faid writ follows in thefe words, to wit, Geo. 2. &c. (fet out the writ); and the fheriff of S. to wit, J. S. efq. at the return of the faid writ, returned to the faid court here, that the faid Jane had found pledges to profecute, to wit, J. Doe and R. Roe, and the faid W. C. had nothing in his bailiwick whereby he could be attached, neither was he found in the fame, as by the faid writ and return now remaining, affiled of record in the court of our faid lord the king here before his juftices, to wit, at Weftminfter aforefaid, more fully appears; and this fhe is ready to verify: wherefore, inafmuch as the faid W. C. is named in this writ innholder, according to the form of the ftatute of Additions, the faid Jane prays judgment, &c. that her faid writ may be adjudged good, and that the faid W. C. may further anfwer, &c.

R. Draper.

Plea to the action of the writ, that the plaintiff fued out the original writ of attachment of privilege before the cause of action accrued.

AND the faid W. K. in his proper perfon, comes and defends the wrong and injury, and fays that the faid R. in Michaelmas Term, in the twenty-firft year of the reign of our lord the prefent king, for the recovery of his damages, by reafon of not performing the faid promifes in the faid declaration mentioned, did profecute out of the faid court of our faid lord the prefent king, before the king himfelf, the fame court then and there being at Weftminfter, in the faid county of Middlefex, in a certain original writ of our faid lord the king, of attachment of privilege againft the faid W. K. directed to the fheriff of Middlefex, whereby the faid fheriff was commanded that he fhould attach the faid W. R. if he fhould be found in his bailiwick, &c. (fet out the writ) which faid writ the faid R. afterwards, and before the return thereof, that is to fay, on the 10th day of January 1747, at Weftminfter aforefaid, delivered to C. G. efq. and E. D. efq. then being fheriff of Middlefex, to be executed in due form of law; at which day of the return of the faid original writ, that is to fay, on Saturday next after eight days from the day of St. Hilary, come the faid R. and the faid W. K. alfo appeared in the faid court here to anfwer the faid R. according to the exigency of the faid original writ; and the faid fheriff, to wit, C. G. and E. D. efquires, returned by virtue of the faid writ to them directed, that they had taken the faid W. K. whofe body they had ready, as by the faid writ and return thereof in the court of our faid lord the king, before the king himfelf, here to wit, at Weftminfter aforefaid, remaining on record, more fully appears: and the faid W. K. further faith, that the faid original writ of privilege of attachment, profecuted as aforefaid by

by the said R. was prosecuted by the said R. with intent to implead the said W. K. for the cause of action in the said declaration above specified, to cause him to appear in the said court here, and to declare against him for the cause of action in the said declaration above mentioned, according to the course and custom of the said court; and the said R. according to such his intent afterwards, to wit, in the same Hilary Term, did declare, by bill against him the said W. K. in manner and form aforesaid: and the said W. K. further says, that the said cause of action in the said declaration mentioned, did not accrue to the said R. at any time before the suing out the said original writ of privilege of attachment; and this, &c. wherefore he prays judgment of the said writ and declaration thereupon, and that the same may be quashed. JOHN FORD.

Plea, that *administration* was granted to the defendant and another person, who ought to have been made defendant.

AND the said C. N. and W. J. in their proper persons, come and defend the wrong and injury, and pray judgment of the said bill of the said W. B. because they say, that the said J. W. on the tenth day of February 1747, at H. aforesaid, died intestate, after whose death, *administration* of all and singular the goods, chattels, and credits, which were of J. W. at the time of his death, by G. P. doctor of laws, in and throughout the whole archdeaconry of St. Alban's, in the diocese of London, official lawfully appointed, to whom the committing of the whole administration of right did belong, on the fourth of March 1747, at, &c. in due form of law, was committed to the said C. N. W. J. and one E. B. of St. Alban's, widow, jointly, and that the said E. together with the said C. N. and W. J. as administrators, did there administer divers goods and chattels, which were of the said J. W. at the time of his decease, which said E. is still living, to wit, at H. aforesaid, and this, &c. wherefore, inasmuch as the said E. is not made a co-defendant with the said C. and W. in the said bill, the said C. and W. pray judgment of the said bill, and that the same may be quashed.

Plea by *administratrix* sued as *executrix*, that she ought to be sued as administratrix, and not as executrix Salk. 297, 298. 5. Mod. 145. 2. Vent. 178.

AND the said E. by her attorney, comes and defends the wrong and injury, and prays judgment of the said bill of the said T. because she says, that the said J. on the first of November 1738, at S. aforesaid, died intestate, after whose death, *administration* of all and singular the goods, chattels, and credits, which were of the said James at the time of his death, by N. N. master of arts, and archdeacon of the archdeaconry of Totness lawfully constituted, to whom the committing of the said administration then of right did belong, upon the twenty-fourth of November 1738, at, &c. in due form of law was committed to the said E. in which case the said T. ought to have named the said E. administratrix of all and singular the goods and chattels which were of the said J at the time of his decease, who died intestate, and not

executrix

executrix of the last will and testament of the said J.; and this she is ready to verify: wherefore she prays judgment of the said bill, and that the same may be quashed; with this, that the said E. will verify that she did not administer any goods and chattels of the said J. before the administration commited to her as aforesaid.

Plea, that the plaintiff is *administratrix*, traversing her being *executrix*.

AND the said E. by his attorney, comes and defends the force and injury, and prays judgment of the said writ, because he says, that the said J. K. on the first of September 1726, at the parish aforesaid, died intestate, after whose death, *administration* of all and singular the goods and chattels which were belonging to the said J. K. at the time of his death, since the decease of the said J. K. that is to say, on the first of December, in the year aforesaid, was in due form of law committed to the said C. to wit, at the parish aforesaid; without this, that the said C. is executrix of the last will and testament of the said J. K. as the said C. by his said writ and declaration hath above supposed; and this, &c. wherefore, since that the said C. is not by his said writ named administratrix of the goods and chattels which were of the said J. K. the said E. prays judgment of the said writ, and that the same may be quashed.

Plea, that the defendant is under *coverture*.

Vide 3 Cases Temp. [illegible] 3. fo. 593. where [illegible] proper replication to this plea. Vide plea of coverture in plaintiff, in Burr. 3. v. p. 1[illegible] 124.

AND S. L. against whom the said J. hath brought this action by the name of S. M. comes and defends the wrong and injury, and prays judgment of the said writ, because she says, that she the said S. before and at the time of suing out the original writ of the said J. was under coverture of one J. L. her husband, which said J. L. is still living, to wit, at Westminster aforesaid; and this she is ready to verify: wherefore, inasmuch as the said J. L. is not named in the said writ, she prays judgment of the said writ, and that the same may be quashed.

Plea, that *another person* [illegible] *bond* with the defendant. Lilly's [illegible]

AND the said W. by his attorney, comes and defends the wrong and injury, &c. and prays oyer of the said writing obligatory, and it is read to him in these words: "Know all "men," &c. (set out the bond, but not the condition) which being read and heard, the said William says, that the said G. in the said writing named, duly sealed and executed the said writing, and thereby became jointly bound with the said W. to the said J. to wit, on the same day and year aforesaid, at L. aforesaid, and that the said G. is still alive, to wit, at L. aforesaid; and this he is ready to verify: wherefore, inasmuch as the said G. is not named in the said writ, the said W. prays judgment of the said writ, and that the same may be quashed.

AND

Plea, that the plaintiff is an *infant* and hath declared by attorney.

AND the ſaid R. by his attorney, comes and defends the wrong and injury, and prays judgment of the above declaration, becauſe he ſays, that the aforeſaid D. *is now within the age of twenty one years, to wit, of the age of nineteen years and no more*, and that the aforeſaid D. by W. D. his attorney, in the court here in the plea aforeſaid hath declared, whereas by the law of the land the ſaid D. by his next friend in the ſaid court to be admitted, ought to have declared; and this he is ready to verify: wherefore, inaſmuch as the ſaid D. being within age, by W. D. his attorney, in that plea in the ſaid court here hath declared, the ſaid R. prays judgment of the ſaid declaration, and if he to the ſame ought to be compelled to anſwer.

Plea, that the defendant is an *infant*.

AND the ſaid J. by R. W. his guardian, who is now admitted by the court of our ſaid lord the king here to defend for him the ſaid J. *who is under the age of twenty-one years*, comes and defends the wrong and injury, when, &c. and ſaith, that he is under the age of twenty-one years, that is to ſay, of the age of fifteen years, and no more; and this, &c. wherefore he doth not intend that during his minority he ought to anſwer the ſaid plaintiff of the ſaid debt as aforeſaid, and prayeth therefore that the ſaid plea may remain till the full age of him the ſaid J.

Plea, that others who are co executors are not made defendants.

AND the ſaid T. and J. in their proper perſons, come and defend the wrong and injury, and pray judgment of the writ aforeſaid, becauſe they ſay, that the aforeſaid J. F. in his lifetime, at N. aforeſaid made his laſt will and teſtament in writing, and thereby made, conſtituted, and appointed the ſaid T. and J. together with A. F. his wife, and one E. F. his ſiſter, *executors* of his ſaid laſt will and teſtament, and afterwards there died; after whoſe death, the ſaid A. F. and E. F. *adminiſtered* divers goods and chattels which were of the ſaid F. at the time of his death, as *executors* of the laſt will and teſtament of the ſaid F. that is to ſay, at N. aforeſaid, which ſaid A. F. and E. are ſtill living, that is to ſay, at N. aforeſaid; and this, &c. wherefore, ſince the ſaid A. F. and E. are not named defendants in the writ aforeſaid, the ſaid T. and J. pray judgment of the ſaid writ, and that the ſame may be quaſhed.

Plea, that the plaintiff is a *popiſh recuſant convict*.

AND the ſaid E. by her attorney, comes and defends the wrong and injury, and ſays, that the ſaid plaintiff, at the time of exhibiting the ſaid bill of the ſaid J. and long before, was and ever ſince hath been a *popiſh recuſant*, and the ſaid J, now is, and before the day of exhibiting the ſaid bill was duly convicted of popiſh recuſancy, to wit, at the general quarter ſeſſions of the peace of our lord the now king, holden at Leeds, in the Weſt Riding of the county of York, in and for the ſaid Weſt

West Riding, by adjournment on the twentieth day of October, in the nineteenth year, &c. before G. B. and H. J. esquires, and others their fellows, then justices of our said lord the king, assigned to keep the peace of our said lord the king within the West Riding aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said West Riding of the county aforesaid; which said conviction was estreated and certified from the said court of the sessions aforesaid into the court of our lord the now king, before the king himself, according to the form of the statute in that case lately made and provided, and the same there still remains in its full force, strength, and effect, not reversed or annulled; and this she is ready to verify by the said record: wherefore she prays judgment of the said bill, and that the same may be quashed, &c.

Plea to a popular action, *that a prior suit is depending* against another person for the same offence.

See the subsequent proceedings, and the report of this case, 3. Burr. 1424.

AND the said defendant, by A.B. his attorney, comes and defends the wrong and injury, and prays judgment of the said bill, because he says, that in the said Term of St. Michael, before our lord the king at Westminster, came one George Lake, by C. D. his attorney, and exhibited in the court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, his certain bill against the said defendant in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, of a plea of debt, and found pledges of prosecuting, to wit, John Doe and Richard Roe; and by the said bill the said George complained against the said defendant, being in the custody, and of a plea, &c. and for that, &c. (set out the declaration) as by the record and proceedings thereof remaining in the same court of our lord the king, before the king himself here, to wit, at Westminster aforesaid, fully appears, which said suit still remains depending and undetermined, and in the said court of our said lord the king here, to wit, at Westminster aforesaid; and the said defendant avers that the said Benjamin Pitt, named in the said bill of the said George L. and the said B. P. the now defendant named in the said bill of the said R. C. are one and the same person, and not other or different; and the said supposed offence in the said first count of the said bill of the said G. L. mentioned, and the said supposed offence in the said first count of the said bill of the said R. C. mentioned, are in fact one and the very same identical offence, and not other or different; and this, &c. wherefore he prays judgment of the said bill of the said R. C. and that the same may be quashed.

J. NASH.

Plea, that the promises were made by defendant *jointly* with another with whom he was partner.

AND the said Henry Noah, in his proper person, comes and defends the wrong and injury, when, &c. and prays judgment of the original writ of the said John, because he says, that at the time of making of the said several promises in the said declaration men-

mentioned, he the ſaid H. N. was partner, and carried on trade and partnerſhip with one W. H. which ſaid W. H. at the time of ſuing out, &c, was and ſtill is living, to wit, at, &c. and the ſaid H. N. in fact, further ſays, that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, were and each of them was made by him the ſaid W. H. jointly with him the ſaid H. N. and not by him the ſaid H. W. alone, as the ſaid J. hath in and by his ſaid original writ ſuppoſed; and this, &c. wherefore, &c.

Replication, that defendant and his pretended partner are one *and the ſame perſon.* Tried at Guildhall after Hilary Term 1783, before Lord Manſfield. Verdict for plaintiff.

And the ſaid T. ſays (*caſſari non*) becauſe he ſays, that the ſaid W. H. and H. N. are one and the ſame perſon, and not other or different perſons; and that the promiſes and undertakings in the ſaid declaration mentioned were not made by any other perſon of the ſaid name of W. H. jointly with the ſaid H. N. but by himſelf the ſaid H. N. otherwiſe W. H. *ſolely*, as the ſaid T. hath above thereof complained againſt him; and this the ſaid T. prays may be enquired of by the country, &c.

In the king's court of record of his Honour of Peverell, and additional limits of the ſame.

Plea to the juriſdiction of an *inferior court.* Co. Litt. 127.

MESS *againſt* FREETH. } AND the ſaid Samuel, in his own proper perſon, comes and pleads, that this court ought not to take further cognizance of the action aforeſaid, becauſe he ſays, that the cauſe of action aforeſaid (if any accrued to the ſaid Daniel) accrued to the ſaid Daniel out of the juriſdiction of this court, that is to ſay, at the town and county of the town of Nottingham, and not at Barford, in the county of Nottingham, or elſewhere within the juriſdiction of this court; and this the ſaid Samuel is ready to verify: wherefore he prays judgment whether this Court will take any further cognizance of the action aforeſaid.

Replication thereto, that the cauſe of action accrued within the juriſdiction.

And the ſaid Daniel ſays, that notwithſtanding any thing by the ſaid Samuel above in pleading alledged, this Court ought not to be precluded from taking cognizance of the action aforeſaid, becauſe he ſays that the cauſe of action aforeſaid did accrue to the ſaid Daniel within the juriſdiction of this Court, that is to ſay, at Barford aforeſaid, in the ſaid county of Nottingham; and this the ſaid Daniel prays may be enquired of by the country, &c.

The doctrine in Co. Litt. 127. that a plea to the juriſdiction may be demurred to, becauſe the party does not make himſelf party by defending the wrong and injury, &c. is over-ruled by the caſe of Ferrers and Miller, reported in Carthew 220, and Salk. 217. Though the cauſe of action did not ariſe at Barford, yet if it accrued any where within the juriſdiction of the court, it is ſufficient. G. S. HOLROYD.

AND

Plea in abatement, that the defendant was baptized by the name of William, that he was ever called or known by the name of Matthew.

AND the ſaid William, who is ſued by the name of *Matthew*, in his proper perſon comes and pleads, that he was baptized by the name of William, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and by the name of William hath always hitherto ſince his baptiſm been called and known; without this, that the ſaid William now is, or at the time of the exhibiting of the bill of the ſaid Peter, James, and William, as ſuch aſſignees as aforeſaid, was or ever before had been, or ever ſince hath been, called or known by the Chriſtian name of *Matthew*, as by the ſaid bill of the ſaid Peter, James, and William, as ſuch aſſignees as aforeſaid, is above ſuppoſed: and this he the ſaid William is ready to verify: wherefore he prays judgment of the ſaid bill, and that the ſame may be quaſhed. E. WIGLEY.

Plea, that the plaintiff is a popiſh recuſant.

AND the ſaid defendant, by A. B. his attorney, comes and defends the force and injury, and ſays, that the ſaid plaintiff, at the time of the exhibiting the ſaid bill of the ſaid plaintiff, and long before, was, and ever ſince hath been, a popiſh recuſant; and that the ſaid plaintiff now is, and before the day of exhibiting of the ſaid bill was, duly convicted of popiſh recuſancy, to wit, at the general quarter ſeſſions of the peace of our lord the now king, holden at Leeds, in the Weſt Riding of the county of York, in and for the ſaid Weſt Riding, by adjournment, on the twelfth day of October, in the nineteenth year of the reign of our ſovereign lord George the Second, now king of Great Britain, before , eſquires, and others their fellows, then juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king within the ſaid Weſt Riding of the county aforeſaid, and alſo to hear and determine divers treſpaſſes, felonies, and other miſdemeanors committed within the ſaid Weſt Riding of the county aforeſaid; which conviction was eſtreated and certified from the ſaid court of the ſeſſion aforeſaid unto the court of our lord the king, before the king himſelf, according to the form of the ſtatute in ſuch caſe made and provided, and the ſame there ſtill remains in its full force, ſtrength, and effect, not reverſed or annulled; and this he is ready to verify: wherefore he prays judgment of the ſaid bill, and that the ſame may be quaſhed, &c.

Replication, that he was born in Germany, and under the protection of the king of England.

AND the ſaid plaintiff ſaith, that he, notwithſtanding anything by the ſaid defendant in pleading alledged, ought not to be anſwered to the ſaid bill, proteſting, that he is not an alien born in the kingdom of Spain, under the allegiance of the king of Spain; proteſting alſo, that he was born at A. in Germany, under the dominion of the emperor of Germany: nevertheleſs, for a replication in this behalf, the ſaid plaintiff ſaith, that he, long before the ſaid time when, &c. to wit, on, &c. and continually from thenceforth to and at the time when, &c. was under the licence and protection of the lord the now king of Great Britain, called England,

to

to wit, at B. in the county aforesaid, and continually from thenceforth hath remained, and still doth remain, under the licence and protection of the said lord the king of Great Britain, to wit, at, &c.; and this, &c.: wherefore he prays judgment, and that he may be answered to his said bill, &c.

Demurrer. And the said defendant says, that the said plea of the said plaintiff, by him in reply above pleaded in maintenance of his said bill, to which said plea, in manner and form above pleaded in reply, the said defendant hath no need, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore, for want of a sufficient plea in reply in this behalf, he, as before, prays judgment if the said plaintiff ought to be answered to his said bill, &c.

Joinder. And the said plaintiff saith, that the said plea of the said plaintiff by him above pleaded in reply, in maintenance of his said bill, is good and sufficient in law for the said plaintiff to maintain his said bill; which said plea, and the matter therein contained, the said plaintiff is ready to verify and prove as the Court shall think meet; and because the said defendant hath not answered the said plea, nor hath hitherto in anywise denied the same, the said plaintiff, as before, prays judgment, and that he may be answered to his said bill: but because the court of our said lord the king now here is not yet advised about giving judgment of and upon the premises, a day is therefore given to the said parties to be before our lord the king at Westminster until, &c. to hear judgment of and upon the same premises, for that the said court of our said lord the king here is not yet advised thereof, &c.

Plea, that the plaintiff is an infant, and ought to sue by *prochein amy*. AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, and prays judgment of the above declaration, because he says, that the aforesaid plaintiff now is within the age of twenty-one years, that is to say, of the age of nineteen years, and no more; and that the aforesaid plaintiff, by A. B. his attorney, in the court here hath declared, when by the law of the land the said plaintiff, by his next friend in the said court to be admitted, ought to have declared; and this he is ready to verify: wherefore, inasmuch as the said plaintiff, being within age, by A. B. his attorney in that plea in the said court here hath declared, the said defendant prays judgment of the said declaration, if he ought to be compelled to answer the same.

If there be divers executors, some above and some under age, they may all sue by attorney, 2. Saunders, 209.

AND

AND the ſaid defendant, in his proper perſon, comes and defends the wrong and injury, and prayeth judgment of the ſaid writ of the ſaid plaintiff, becauſe he ſays, that he the ſaid defendant, at the time of ſuing forth the original writ of the ſaid plaintiff, and long before, was inhabiting, reſident, and commorant, in the pariſh of St. James, in the liberty of Weſtminſter, in the county of Middleſex; without this, that the ſaid defendant was ever inhabiting, reſident, or commorant, at London aforeſaid, as the ſaid plaintiff by his ſaid writ hath above ſuppoſed; and this he is ready to verify: wherefore he prays judgment of the ſaid writ, and that the ſame may be quaſhed.

Plea, that the defendant was commorant in the pariſh of St. James, and traverſes that he was commorant at London. Raſt. 108. 126. 160.

And the ſaid plaintiff ſaith, that, by anything by the ſaid defendant above in pleading alledged, the ſaid writ of the ſaid plaintiff ought not to be quaſhed, becauſe he ſaith, that ſome ſhort time before the iſſuing of the ſaid writ the ſaid defendant was commorant in London aforeſaid, to wit, upon the twelfth day of November, in the year of our lord 1738, in the pariſh and ward aforeſaid; and this he prays may be enquired of by the country.

Replication, that the defendant, ſome ſhort time before the iſſuing the writ, was commorant in London.

And the ſaid defendant ſays, that the ſaid plea of the ſaid plaintiff, in manner and form as the ſame is above pleaded by way of replication, and the matter therein contained, are inſufficient in law for the ſaid plaintiff to maintain his ſaid writ to be good againſt him the ſaid defendant, and that he is under no neceſſity, nor obliged by the law of the land, to anſwer to the ſaid plea, in manner and form as the ſame is above pleaded; and this, &c.: wherefore, for want of a ſufficient replication in this behalf, the ſaid defendant prays judgment of the ſaid writ, and that the ſame may be quaſhed.

Demurrer.

And the ſaid plaintiff, inaſmuch as he hath above alledged ſufficient matter in law in his ſaid replication to maintain his ſaid writ againſt the ſaid defendant, which he is ready to verify; which ſaid matter the ſaid defendant doth not deny, nor in anywiſe anſwer, but altogether refuſes to admit the averment thereof; therefore as before the ſaid plaintiff prays judgment, and that the ſaid defendant may further anſwer the ſame: and becauſe the juſtices here are willing, &c.

Joinder.

AND the ſaid defendant, by A. B. his guardian, who is now admitted by the court of our ſaid lord the king here to defend for him the ſaid defendant, who is under the age of twenty one years, that is to ſay, of the age of twelve years, and no more; and this he is ready to verify: wherefore he doth not intend that during his minority he ought to anſwer the ſaid plaintiff of the debt aforeſaid, and prayeth therefore that the ſaid plea may remain until the full age of him the ſaid defendant.

Plea, that the defendant is a minor and ought not to anſwer till of full age.

AND

Plea by an attorney sued by an original, that he ought to be sued by bill.

AND the said defendant, in his proper person, comes and says, that he ought not to be compelled to answer the said original writ, because he says, that he is, and on the day of suing out of the original writ, and long before, was, one of the attornies of the court of our lord the king of the bench here; and that in the same court there now is, and from time whereof the memory of man is not to the contrary there hath been, a custom used and approved of in the same court, that no attorney of the said court hath against his will been compelled to answer any person in any personal action prosecuted in the same court here by original writ sued out which have not concerned the king, unless he hath been first forejudged from his office of an attorney of this court upon a bill exhibited here to the justices of the said lord the king of the bench against such attorney, and filed in the same court; and the said D. in fact saith, that he hath not been forejudged from his office of an attorney of this court, and that he is impleaded by the original writ aforesaid against his will, and against the custom aforesaid, and this he is ready to verify: wherefore, as the said defendant is an attorney of the said court here, and on the day of suing out the said original writ, and long before, was, an attorney of the said court here, the said defendant prays his privilege aforesaid to be allowed and adjudged him, and that he may not answer the said original writ for the cause aforesaid.

Plea, another action depending.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, and prays judgment of the said declaration, because he says, that the said plaintiff heretofore, in the Term of St. Hilary, in the tenth year of the reign of our said lord the king, in the court of our said lord the king of the bench here, to wit, at Westminster aforesaid, impleaded the said defendant by the name of A. B. of, &c. chapman, in a plea of trespass on the case, declaring against the said defendant in the same court in the said plea, that whereas, &c. [here insert the declaration] and therefore he brings suit, &c.; which said plea still depends in the said court of our said lord the king of the bench here, to wit, at Westminster aforesaid, not determined or discontinued, as by the record and proceedings thereof remaining in the said court of the said lord the king of the bench here, to wit, at Westminster, manifestly appears; and the said defendant further saith, that the cause of action above mentioned, and specified in the declaration of the said plaintiff herein recited, and the said cause of action above mentioned, and specified in the said declaration of the said plaintiff, to which the said defendant now here pleads, are one and the same cause of action, and not divers; and this he is ready to verify: wherefore he prays judgment of the said declaration of the said plaintiff to which he now pleads, and that the same may be quashed.

AND

AND the said D. by A. B. his attorney, comes and defends the wrong and injury when, &c. and prays oyer of the said writing obligatory, and it is read to him in these words [the bond without condition]; which being read and heard, the said defendant says, that the said G. S. in the said writing obligatory named duly sealed and executed the said writing obligatory, and thereby became jointly bound with the said defendant to the plaintiff, to wit, on the same day and year, at London aforesaid: wherefore, inasmuch as the said G. S. is not named in the said writ, the said defendant prays judgment of the said writ, and that the same may be quashed. Plea, that the defendant was bound jointly with another, who is living, not named.

The defendant became bound to the plaintiff and another; and because it is not shewn whether the other be living or dead, 1. Bro. 4. this is the only way to take advantage of the matter; for if he pleads *non est factum*, it will be against him: so on demurrer, for the Court will not presume that the other defendant executed. 1. Stra. 503.

AND the said defendant, in his proper person, comes and defends the wrong and injury, and says, that the said plaintiff, in Michaelmas Term, in the tenth year of the reign of our lord the present king, for the recovery of his damages by reason of the not performing the said promise in the said declaration mentioned, did prosecute out of the said court of our lord the king, before the king himself, the said court then and still being at Westminster, in the county of Middlesex, a certain original writ of our said lord the king of attachment of privilege against the said defendant, directed to the sheriff of Middlesex, whereby the said sheriff was commanded that he should attach the said defendant if he should be found in his bailiwick, and that he should safely keep him, so that he should have his body before the said lord the king at Westminster, on Saturday next after eight days from the day of St. Hilary, to answer to the said plaintiff, gent. being one of the attornies of the king's bench, before the king himself, according, &c. in a plea of trespass, and also to a bill for fifty pounds upon promises, and that the said sheriff should have then there that writ; which said writ the said plaintiff afterwards, and before the return thereof, that is to say, on, &c. at Westminster aforesaid, delivered to one A. B. and C. D. esquires, then being sheriff of Middlesex, to be executed in due form of law; at which day of the return of the said original writ, that is to say, on Saturday, &c. [as before] came the said plaintiff, and the said defendant also appeared in the said court here to answer to the said plaintiff, according to the exigency of the said writ; and the said sheriff, to wit, A. B. and C. D. did return, that by virtue of the said writ to him directed he had taken the said defendant, whose body he had ready, as by the said writ and the return thereof in the court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, remaining of record, more fully appears; and the said defendant further saith, that the said original writ of privilege of attachment prosecuted as aforesaid by the said plaintiff, Plea, that the original was sued out before the cause of action accrued. Clift. 10. 19.

was proſecuted by the ſaid plaintiff with an intent to implead the ſaid defendant for the cauſe of action in the ſaid declaration mentioned above ſpecified, to cauſe him to appear in the ſaid court here, and to declare againſt him for the cauſe of action above named, according to the courſe and cuſtom of the ſaid court; and that the ſaid plaintiff, according to ſuch his intention, afterwards, to wit, in the ſaid Hilary Term, did declare by bill againſt him in manner and form aforeſaid; and the ſaid defendant further ſays, that the ſaid cauſe of action in the ſaid declaration mentioned did not accrue to the ſaid plaintiff at any time before the ſuing out of the ſaid original writ of privilege of attachment; and this he is ready to verify: wherefore he prays judgment of the ſaid writ and declaration thereupon, and that the ſame may be quaſhed.

[redacted]id plaintiff prayeth a day to imparl to th[redacted] plea, [redacted]ed to him, &c. ; [redacted] to the [redacted]id to come befo[redacted] until Wedneſday next after fifteen days from the day of Eaſter, that is to ſay, for the ſaid plaintiff to imparl to the ſaid plea, and then to reply to the ſame, &c. : at which day as well the ſaid plaintiff in his proper perſon as the ſaid defendant by his attorney do come before our lord the king at Weſtminſter; and the ſaid plaintiff ſaith, that the plea aforeſaid by the ſaid defendant in manner and form aforeſaid, and the matters therein contained, are not ſufficient in law to quaſh the ſaid bill of the ſaid plaintiff, and that the ſaid plaintiff is not under any neceſſity, nor in any wiſe bound by the law of the land, to anſwer the ſaid plea, in manner and form aforeſaid pleaded; and this, &c. : wherefore, for want of a ſufficient plea in this behalf, the ſaid plaintiff prays judgment, and that the ſaid bill may be adjudged good, and that the ſaid defendant may anſwer thereto, &c.

Joinder in demurrer.

And the ſaid defendant ſaith, that the aforeſaid plea in manner and form by him the ſaid defendant above pleaded, and the matters therein contained, are good and ſufficient in law to quaſh the ſaid bill of the ſaid plaintiff, which ſaid plea, and the matters therein contained, the ſaid defendant is ready to verify and prove as the Court ſhall award; and becauſe the ſaid plaintiff hath not anſwered the ſaid plea, nor hitherto in anywiſe denied the ſame, the ſaid defendant, as before, prays judgment, and that the ſaid bill of the ſaid plaintiff may be quaſhed: but becauſe the court of our lord the king now here is not yet adviſed about giving judgment of and upon the premiſes, day is thereupon given to the parties aforeſaid to come before our lord the king at Weſtminſter until Friday next after the morrow of the Holy Trinity, to hear judgment of and upon the ſame premiſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof, &c. : at which day, before our lord the king at Weſtminſter, come as well the ſaid plaintiff in his proper perſon as the ſaid defendant by his attorney; and becauſe the ſaid court of our ſaid lord the king, before the king himſelf, are

are not yet advised among themselves what judgment to give in the premises, a day is further given to the parties aforesaid to be before our lord the king at Westminster until on Monday next after three weeks from the day of St. Michael, to hear judgment of and upon the premises, because that the court now here are not yet advised, &c.: at which day, before our lord the king at Westminster, came as well the said plaintiff as the said defendant by his attorney aforesaid; and thereupon the premises aforesaid being seen and inspected by the court here, and by them fully understood, and mature deliberation being thereupon had, it seems to the court, that the said plea of the said defendant, and the matter therein contained, are not sufficient in law to quash the said bill of the said plaintiff, or to hinder this court from giving cognizance of the said plea. Therefore it is considered, in and by the said court here, that the said defendant do answer over the said bill of the said plaintiff; and hereupon the said defendant, by E. F. his attorney, comes [illegible] wrong and injury, &c. and says, that he did not undertake and promise in manner and form as the said plaintiff hath above complained against him; and of this he puts himself upon the country, &c.

Judgment, respondeat ouster.

AND the said defendant comes and defends the wrong and injury, and prays judgment of the said writ, because he says, that the said A. on, &c. at the parish aforesaid, died intestate; after whose death administration of all and singular the goods and chattels which were belonging to the said A. at the time of his death since the decease of the said A. that is to say, on, &c. was in due manner committed to the said plaintiff, to wit, at the parish aforesaid; without this, that the said plaintiff is executor of the last will and testament of the said A. B. as the said plaintiff by his said writ and declaration above supposes; and this he is ready to verify: wherefore, since the said plaintiff by his said writ is not named administrator of the goods and chattels which were of the said A. B. the said defendant prays judgment of the said writ, and that the same may be quashed.

Plea, that the plaintiff is administrator, and traverse that he is executor.

AND the said D. by E. F. his attorney, comes and defends the force and injury when, &c. and prays judgment of the said bill, because he says, that the said plaintiff, neither at the said times when, &c. nor ever since, hath not nor had anything in the said close in which, &c. nor in the said trees and underwood in the said bill mentioned to be there growing, nor in any of them, nor any part thereof, nor in the said goods and chattels in the said bill mentioned, nor in any of them, nor in any part thereof, but jointly and undividedly with A. B. and C. D. esquires, who are both still alive, to wit, at S. aforesaid; and this, &c.: wherefore, inasmuch as the said A. B. and C. D. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed.

Plea in trespass, that the plaintiff and another were jointenants. For tenant in common with another, see 1. Bro. 8. Hanf. 103. Replication, that the plaintiff was sole seised, and traverses the other having anything.—Rast. 653. 1. Bro. 8. Hanf. 103.

Plea, that the promises were by the defendants and one A. B. and that the said A. B. is still alive.

AND the said R. W. and J. by S. C. their attorney, come and defend the wrong and injury, and pray judgment of the writ aforesaid, because they say, the several promises and undertakings in the said declaration mentioned, if any such were made, were, and each and every of them was, made by the said R. W. and J. and one Sir W. F. and J. S. jointly, to wit, at London aforesaid, in the parish and ward aforesaid, which said Sir W. F. and J. S. are still alive, to wit, at London aforesaid, in the parish and ward aforesaid; and this they are ready to verify: wherefore, since the said Sir W. F. and J. S. are not named in the said writ, the said R. W. and J. pray judgment of the said writ, and that the same may be quashed.

THOMAS DAVENPORT.

Discontinuance.

AND hereupon the said P. as to the said plea of the said defendant, says, that he cannot deny the exception aforesaid made by the said defendant to the said bill, but confesses it to be true; therefore it is considered, that the said P. shall take nothing by his bill aforesaid so exhibited against the said D. as aforesaid, but shall be in mercy for his false claim as to the said D. thereon, and that the said D. shall go thereon without day.

N. B. The defendant pleaded in abatement that his name was J. and not D, on which the plaintiff discontinued as above.

Nolle prosequi to a plea in abatement.

AND hereupon the said plaintiff says, that he cannot deny the exceptions aforesaid made by the said defendant to the said bill, but confesses it to be true, and prays leave to exhibit a better bill against him, and it is granted to him, &c.: therefore it is considered, that the said plaintiff shall take nothing by his said bill so exhibited as aforesaid, but shall be in mercy for his false claim therein; and the said P. shall go thereupon without day, &c.

Plea to the jurisdiction, that the cause of action arose in Wales.

AND the said defendant, by A. B. his attorney, comes and defends the force and injury, &c. and saith, that the said county of Glamorgan is one of the twelve counties within the principality or dominion of Wales, within which said county there now is, and at the time of the exhibiting of the bill of the said plaintiff, and long before that time was, a certain court of our lord the king of great sessions, holden for the said county of Glamorgan before certain justices of the same court there, and that all and singular pleas and actions, as well real as personal, arising within the same county are, and at the time of exhibiting the bill of the said plaintiff were, and of right ought to be, pleaded and pleadable within the said county of Glamorgan, before the said justices of the said court of great sessions there for the time being, and not here in the court of our lord the king before the king himself; and that the said defendant, at the time of exhibiting the said bill of the said plaintiff, and before, was, and from thence hitherto hath been, and still is, resident

resident and commorant within the same county, to wit, at Cowbridge aforesaid, in the county aforesaid; and this, &c.: wherefore, since the cause of action aforesaid arises within the said county of Glamorgan, within the principality or dominion of Wales, the said defendant prays judgment if the court of our lord the king now here will or ought to have further cognizance of the plea aforesaid.

J. Lee.

Plea, that the cause of action arose out of the jurisdiction.

AND the said defendant, in his proper person, comes and says, that the Court ought not to have further cognizance of the plea aforesaid, because he says, that the cause of action aforesaid, if any, accrued to the said plaintiff out of the jurisdiction of this court, to wit, at T. in the county of N. and not at D in the declaration named, or elsewhere within the jurisdiction of this court; and this, &c.: wherefore he prays judgment if this court ought or will have cognizance of the plea aforesaid.

Plea, that all pleas for the recovery of lands within the county palatine of Chester ought to be before the justices there.

AND the said defendant, in his proper person, comes and defends the force and injury, &c. and says, that the court of Chester is, and from time whereof the memory of man is not to the contrary hath been, a county palatine; and that there now are, and for all the time aforesaid have been, justices there; and that all and singular pleas for the recovery of the possession of manors, messuages, lands, and tenements, lying and being within the same county, have been for all the time aforesaid pleaded and pleadable within the said county of Chester, before the justices there for the time being, and not here in the court of our lord the king, before the king himself; and this he is ready to verify, as the Court, &c.: wherefore, since the plea aforesaid is brought for the recovery of manors, messuages, lands, and tenements aforesaid, within the county palatine, the said defendant prays judgment if the court of our lord the king will or ought to have further cognizance of the plea aforesaid.

E. Bootle.

Plea in abatement of variance between the *writ* and *specialty*.

AND now come as well the aforesaid T. as the aforesaid I. in their proper persons; and because the aforesaid T. is named and called in a certain writing obligatory against the aforesaid I. brought here into court (by which said writing the aforesaid I. is bound to the aforesaid T. in the aforesaid one hundred pounds, to be paid in a certain term in the same writing contained), by the name of J. K. of L. mercer; and in the writ aforesaid the said T. is named and called by the name of T. H. &c.; and so there is a variance between the writ aforesaid and the said writing obligatory; upon which writing the aforesaid writ was sued out: therefore it is considered, that the aforesaid T. take nothing by his writ aforesaid, but that he be in mercy, &c. for this false claim; and that the aforesaid I. do go thereof without day, &c.; and that the letters patent of our

our lord the king for pardoning the outlawry promulged against him the said I. by occasion of the premises be allowed to the said I. &c. &c.

Plea in abatement of variance between the writ and specialty after oyer.

WHICH being read and heard, the said defendant says, that the writ aforesaid is variant from the writing aforesaid, forasmuch as the said defendant is named in the said writing, "John C. jun. of New "Sarum;" which words, "jun. of New" are omitted in the writ aforesaid; and so that writ is not warranted by the writing aforesaid: wherefore the defendant prays judgment of that writ, &c.

Plea in abatement of variance between the writ and testament, in debt by an executor.

THE defendant says, that the aforesaid testator is named in the writ aforesaid T. G. late of Dundee, and in the testament aforesaid he is named T. Dodsyne, of the parish of Dundee; and so the writ aforesaid is variant from the testament aforesaid, and is not at all warranted by the same: wherefore he prays judgment of the said writ, &c.: and hereupon as well the writ as the testament aforesaid being seen by the Court, the exception aforesaid is found to be true: therefore it is considered that the aforesaid plaintiff take nothing by his writ aforesaid, but that he be in mercy for his false claim, and that the aforesaid defendant do go thereof without day, &c.

Plea in abatement of variance between the original and specialty.

AND the aforesaid defendant, by A. B. his attorney, comes and prays judgment of the writ aforesaid, because he says, that there is a variance between the writing aforesaid brought here into court and the original writ sued out upon the said writing; because, he says, that the said defendant is named and called by that writing K. B. of T.; and this he is ready to verify: wherefore, inasmuch as there is a variance between the writ aforesaid and the writing aforesaid upon which the aforesaid writ was sued out, he prays judgment of the said writ, &c.

Another after oyer.

WHICH being read and heard, the defendant prays judgment of the writ aforesaid, because he says, that in the aforesaid writing obligatory, upon which the writ aforesaid was sued out, he is named and called by the name of J G. of S. in the county of N. clerk, and in the writ aforesaid the said J. is named and called by the name of G. G. of B. in the county of S. clerk; and so there is a manifest variance between the writ aforesaid and the aforesaid writing obligatory upon which that writ was sued out; and this, &c.; wherefore, &c.

AND

Plea in abatement for variance between the plaint and declaration.

AND the aforesaid defendant, by T. S. his attorney, comes and defends the force and injury when, &c. and craves oyer of the plaint aforesaid, and it is read to him in these words, to wit, "T. B. complains of R. K. &c. of a plea that he render to him ten pounds, "which, &c.; and there are pledges of prosecuting, &c." [as in the plaint]: which being read and heard, the plaintiff prays judgment of the declaration aforesaid, because he says, that there is a material variance between the plaint and declaration aforesaid, as appears to the court here; and this, &c.: wherefore, on account of that variance, the said defendant prays judgment of the declaration aforesaid, &c.

Plea in abatement for the joinder of other inconsistent causes of action in one bill.

AND the aforesaid defendant, by T. S. his attorney, comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid now exhibited against him, because he says, that by the said bill it appears that the said plaintiff complains of several and distinct causes of action, when by the law of the land the said plaintiff ought to have exhibited several bills for the said causes of action respectively, and not one bill only for all the causes of action aforesaid together; and this the said defendant is ready to verify: wherefore, inasmuch as the said plaintiff hath above joined in one and the same bill many causes of action not joinable, the said defendant prays judgment of the said bill, &c.

Similar plea where the causes of action depend on two several titles.

AND the aforesaid defendant, present here in court, defends the force and injury when, &c. and prays judgment of the bill aforesaid now exhibited against him, because he says, that by the said bill it appears that the aforesaid plaintiff complains of two several and distinct trespasses depending upon two several titles to two several and distinct offices, whereas the aforesaid plaintiff ought to have exhibited two several bills for the same trespasses respectively, and not one bill only for both the causes of action aforesaid together; and this he is ready to verify: wherefore, inasmuch as the said plaintiff hath above joined in one and the same writ two causes of action not joinable, the said defendant prays judgment of the said bill, &c.

Plea in abatement, that the bill is in case which ought to be in account.

AND the aforesaid J. C. by J. G. his attorney, comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid, because he says, that by the bill aforesaid it appears that the aforesaid J. C. is chargeable by virtue of the promises and undertakings in the said bill mentioned, in a plea of account, as bailiff of the said J. P. senior; and for this, that the bill aforesaid is in a plea of trespass upon the case, the aforesaid I. prays judgment of the bill aforesaid, and that that bill may be quashed.

Plea in abatement in appeal of murder for misnaming the parish.

THE defendant craves oyer of the original writ, and it is read to him: he also craves oyer of the return, which was, that the sheriff had attached the defendant by his body, but he was removed by a habeas corpus into the king's bench, so that he could not have his body at the day of the return of the writ aforesaid; which being read and heard, the said G. W. by A. B. his attorney, defends the force and injury when, &c. and all the felony, and whatsoever, &c. and prays judgment of the original writ aforesaid, because he says, that he the said G. W. by that writ is appealed by the name of G. W. late of the parish of St. James's, Westminster, in the county of Middlesex, gent. when in truth and in fact within the county of Middlesex aforesaid there is a certain parish called and known by the name of the parish of St. James's, within the liberty of Westminster, but in the said county of Middlesex there is not, nor on the day of suing out the original writ of appeal aforesaid, nor ever was there, any parish, town, or place, called and known by the name of the parish of St. James, Westminster, only, as the aforesaid Elizabeth, by her writ aforesaid, above supposes; and this he the said G. is ready to verify: wherefore he prays judgment of the writ aforesaid, and that the writ aforesaid may be quashed.

Demurrer and judgment.

And the aforesaid Elizabeth demurred generally to the plea in abatement; and this, &c.: wherefore, for want of a sufficient answer in this behalf, the said Elizabeth prays judgment against the aforesaid G. W. of and upon the premises, and that that writ may be adjudged good; and the said G. W. &c. to quash the writ [as in other rejoinders], and that that writ may be quashed.

Plea in abatement for not distinguishing the vill.

IN debt against J. B. of T. in the county aforesaid, yeoman, the defendant says, that in the county aforesaid there are two vills called T. and neither of them without addition, and that in the same county there never was a vill called T. only, as the aforesaid plaintiff, by his writ aforesaid, above supposes; and this, &c.: wherefore he prays judgment of that writ, &c.: and the plaintiff maintains the writ, &c.: therefore let twelve of the body of the county, &c. &c.

Plea in abatement for naming the defendant of a place which is no vill.

AND the aforesaid R. W. of Epping, in the county aforesaid, husbandman, in his proper person, says, that on the day of suing out the writ aforesaid he was commorant and conversant at the vill of Epping, in the county aforesaid, and that he is the same person against whom the aforesaid T. brought his writ aforesaid by the name of R. W. of I.; and he defends the wrong and injury when, &c. and says, that the aforesaid place called I. in the aforesaid vill of Epping, is no vill or hamlet of itself, nor any place out of a vill or hamlet; and this he is ready to verify; in which case the said R. ought to have been named in the writ aforesaid of the aforesaid vill of Epping: wherefore, since he is not so named, according to the form of the

statute

statute of Additions of the degree or mystery of defendants in writs wherein process of outlawry lies, he prays judgment of the writ aforesaid, &c.

Plea in abatement for non-commorancy.

THE defendant says, that he on the day of suing out the writ aforesaid was commorant and conversant at B. in the county of S.; without this, that he ever was commorant or conversant at B. aforesaid, as by the writ aforesaid is supposed; and this, &c.: wherefore he prays judgment of that writ, &c. [The defendant demurred in law, and judgment was given for the defendant to answer over.

That C. is parcel of R. in trespass at R. and C.

IN trespass at R. and C. the defendant says, that the place called C. is within the aforesaid vill of R. and parcel of the same vill; and this, &c. The plaintiff denies the plea; and this, &c.

Plea in abatement for putting the wife's name before the husband's.

AND the aforesaid tenant, by A. B. his attorney, comes and says, that whereas by the writ aforesaid it is supposed that the messuages and shops aforesaid were given to the aforesaid Agnes, the daughter of John, in free marriage with the aforesaid William, the son of Richard, the descent is made by the said writ from them the said Agnes and William putting the name of the wife before that of the husband, when by the form, &c. the name of the husband ought to be put before that of the wife: wherefore, for defect of form, he prays judgment of the writ, &c.

Confesses plea, and prays a better writ.

And the aforesaid plaintiff not denying the exception aforesaid, for that and other causes in the aforesaid writ contained, prays licence to obtain a better writ; and he hath it, &c.; therefore it is considered, that the aforesaid plaintiff take nothing by his writ aforesaid, but that he be in mercy for his false claim, &c.

Plea in abatement for omitting a word in the writ, and judgment of quassetur billa.

AND the aforesaid defendant, by B. A. his attorney, comes and says, that in the writ aforesaid the aforesaid plaintiff hath made an omission of this word, "by," between them the said J. H. and L. M. for which reason the writ aforesaid is defective and insufficient in itself; wherefore he prays judgment of the writ, &c.: and because the exception aforesaid is manifest to the justices here, by inspection of the said writ; therefore it is considered, that the aforesaid plaintiff take nothing by his said writ aforesaid, but that he be in mercy for his false claim, &c.

Plea in debt for an administrator in abatement.

THE defendant prays judgment of the writ, because he says, that in the aforesaid letters official it is contained, that administration of all the goods and chattels of W. C. otherwise P. was committed to the [plaintiff] at London aforesaid, and in the writ aforesaid there is [an omission] of the [aforesaid words] " otherwise P.:" wherefore

it does not appear in or by the said writ but that the aforesaid W. in the writ aforesaid named, and the said W. in the letters aforesaid named, are different persons: wherefore he prays judgment of the writ aforesaid, &c.

Confesses the plea and judgment.

And because the aforesaid plaintiff does not deny the exception aforesaid (which sufficiently appears to the court here by the inspection and comparison of the writ and letters aforesaid); therefore it is considered, that the aforesaid plaintiff take nothing by his writ aforesaid, but that he be in mercy for his false claim, and that the aforesaid defendant do go thereof without day, &c.

Or confesses ... thus.

And hereupon as well the writ as the letters aforesaid being seen by the Court, the said exception is found true: therefore it is considered, &c.

Plea of property in a stranger.

AND the aforesaid T. F. by A. B. his attorney, comes and defends the force and injury when, &c. and prays judgment of the aforesaid writ, because he saith, that the property of the aforesaid three cows in the declaration aforesaid specified, at the said time when, &c. was in one C. D.; without this, that the property of the said cows, at the same time when, &c. was in the aforesaid E. T. as by the writ aforesaid is above supposed; and this, &c.: wherefore he prays judgment of the writ aforesaid, &c.

Plea in abatement, that one of the defendants died before the writ.

AND the aforesaid B. by C. D. his attorney, comes and says, that he is in no wise guilty of the trespass aforesaid, as the aforesaid plaintiff above complains against him: for plea he says, that the aforesaid A. one of the defendants, is dead, and that he died before the suing out of the aforesaid writ of the aforesaid plaintiff, to wit, at M. in the county aforesaid; and this he is ready to verify: wherefore he prays judgment of the writ aforesaid, &c.

Replication thereto.

And the aforesaid plaintiff says, that the writ aforesaid, for the reason above alledged, ought not to be quashed, because he says, that the aforesaid A. on the day of suing out the writ aforesaid, to wit, on, &c. at, &c. was living and in full life, and was not dead, as the aforesaid defendant hath above alledged; and this he prays may be enquired of by the country, &c.

Plea, that the plaintiff died *puis darrein continuance.*

AND the aforesaid A. B. by C. D. his attorney, comes and defends the force and injury when, &c. and saith, that after the last continuance of the writ aforesaid, to wit, the octave of St. Hilary last past, from whence the process was continued here until this day, to wit, fifteen days from the day of Easter, and before this day, the aforesaid plaintiff died, to wit, at K. in the county of S.; and this

this he is ready to verify: wherefore he prays judgment of the writ aforesaid, &c.

And the aforesaid attorney, in the name of the aforesaid plaintiff, and for him the said plaintiff his client, saith, that his writ aforesaid, for the reason above alledged, ought not be quashed, because he saith, that the said plaintiff is living and in full life, to wit, at, &c. and not dead, as the aforesaid defendant above alledges; and this, for the said plaintiff his client, he prays may be enquired of by the country, &c. Replication thereto, and issue.

AND the said P. by J. S. his attorney, comes and defends the force and injury when, &c. and saith, that he ought not to be obliged to answer to the said bill of him the said W. because he saith, that at the delivery of the gaol of our lord the king, of Newgate, holden for the county of Middlesex, at Justice Hall in the Old Bailey, in the suburbs of the city of London, on Wednesday the sixth day of December, in the twenty-sixth year of the reign of our sovereign lord George the Second, king of Great Britain, before Sir C. G. knight, mayor of the city of London, E. C. esquire, one of the barons of the Court of Exchequer of our said lord the king; H. L. esquire, one other of the barons of the said Court of Exchequer of our said lord the king; Sir H. M. knight, one of the aldermen of the city of London, and others their fellows, justices of our said lord the king, assigned to deliver his gaol of Newgate of the prisoners therein being, the said W. by the name and addition of W. Lee, late of the parish of St. George, in the county of Middlesex, labourer, according to due course of law in that behalf duly taken, was tried and duly convicted upon an indictment, for that he, on the twenty-fifth day of November, in the twenty-sixth year of the reign of our sovereign lord George the Second, king of Great Britain, &c. with force and arms in the parish aforesaid, in the county aforesaid, one silver watch of the value of three pounds, of the goods or chattels of one W. H. thirteen pieces of foreign gold coin, called thirty-six shilling pieces, of the value of twenty-three pounds eight shillings; one piece of gold coin of the proper coin of this kingdom called a guinea, of the value of twenty-one shillings; one piece of gold coin of the proper coin of this kingdom called a half guinea, of the value of ten shillings and sixpence; and ten shillings in monies numbered, of the monies of one E. W. widow, in the dwelling-house of the said E. then and there being found, feloniously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity. And the said P. further saith, that afterwards, to wit, at the delivery of the gaol of our said lord the king, of Newgate, holden for the said county of Middlesex, at Justice Hall aforesaid, on Wednesday the second day of May, in the twenty-sixth year aforesaid, before Sir C. G. knight, Plea in abatement to the person convicted of felony.

knight, mayor of the city of London; Sir W. L. knight, Chief Justice of our said lord the king, assigned to hold pleas before the king himself; Sir E. C. knight, one of the justices of our said lord the king of the Court of Common Pleas; H. L. esquire, one of the barons of the Court of Exchequer of our said lord the king, and others their fellows, justices of our said lord the king, assigned to deliver the gaol of Newgate of the prisoners therein being, our said lord the king having been graciously pleased to extend his royal mercy to the said W. L. on condition of transportation to some parts of America for the term of seven years, which had been signified by one of his Majesty's principal secretaries of state to the said justices and court there, according to the statute in that behalf; and which mercy, upon condition aforesaid, the said W. L. then and there in the said court did consent and agree to accept; whereupon it was by the same court then and there considered, that the said W. L. should be transported to some of his Majesty's colonies and plantations in America for the term of seven years, according to the form of the statute in such case made and provided, as by the record thereof may more fully appear; which said judgment yet remains in its full force and effect by the said William, not reversed or annulled, and which said term of seven years for which the said William was so adjudged to be transported is not yet expired; and this he the said P. is ready to verify by the said record: wherefore he prays judgment whether he ought to be compelled to answer to the said bill, &c.; with this, that the said P. will verify that the said W. L. in the said record mentioned, and the aforesaid William, the now plaintiff in the said bill mentioned, is one and the same and not another and different person, &c.

Replication thereto.

And the said W. as to the said plea of the said P. by him above pleaded in bar, says, that he, by any thing in that plea contained, [redacted] be barred from having his aforesaid action maintained against the said P. because he says, that long after the said conviction was so had against the said William, and before the day of the exhibiting of the bill of the said William, to wit, on the seventh day of April, in the thirty-second year of the reign of our sovereign lord the now king, our said lord the now king by his letters patent bearing date at Westminster the same day as the last aforesaid, sealed with his great seal of England, and which said letters patent he the said W. brings here into court, acquitted, released, and discharged the said W. his heirs, executors, and administrators, against our said lord the king, his heirs and successors, of and from the said felony in the said plea mentioned, and of and from all manner of treasons, felonies, misprision of treasons and felonies, treasonable or seditious words or libels, seditious and unlawful meetings and conventicles and all offences by reason whereof the said W. could be charged with the penalty and danger of a præmunire, all riots, routs, offences, contempts, trespasses, misdemeanors, and all judgments and

Protests of letters patent.

con-

convictions for not going to church, and of and from all forfeitures and penalties for the same, or either of them, before had committed or done; and the will and pleasure of our said lord the king was by the said letters patent expressed to be, that the said W. his heirs, executors, or administrators, should *not be* sued, vexed, or disquieted in his body, goods, or chattels, lands or tenements for the said felony or the conviction aforesaid, or for any matter, cause, contempt, misdemeanor, forfeiture, offence, or any other thing before done, committed, or omitted against our said lord the king, his crown, dignity, prerogative, laws, and statutes; and that the said grant of our said lord the king of general pardon by general words, clauses and sentences in the same letters patent before rehearsed, should be reputed, esteemed, adjudged, expounded, allowed and taken in all the courts of our said lord the king, most beneficially and amply for the said W. and as if the particular crimes of the said W. had been fully and at large mentioned and expressed in the same letters patent, as by the said exemplification of the said letters patent more fully appears; and the said W. further saith, that the several causes of action in the said declaration mentioned did accrue, and each and every of them did accrue after the said conviction in the said plea mentioned, and before the granting of the pardon aforesaid by our said lord the king, to wit, on the seventh day of April, anno domini 1756, at L. aforesaid, in the parish and ward aforesaid; and this he is ready to verify: wherefore he prays judgment and the damages, &c. so adjudged to him, &c.

Plea in abatement, and the writ and declaration that plaintiff's testator was a bankrupt, and never obtained his certificate.

AND the said E. by S. P. his attorney, comes and defends the wrong and injury, &c. and prays judgment of the said writ and declaration, because he says, that long before the suing out of the original writ of the said D. as administratrix as aforesaid in this behalf, to wit, on the first day of October, anno domini 1778, and long before the said George W. deceased in his life-time was a trader within the true intent and meaning of the several statutes made and now in force concerning bankrupts or some one of them, to wit, at L. aforesaid, in the parish and ward aforesaid; and the said E. further says, that the said G. W. in his life-time, afterwards, to wit, on the seventh day of November, anno domini 1778 aforesaid, being and remaining such trader as aforesaid, became and was a bankrupt within the true intent and meaning of the several statutes made and now in force concerning bankrupts, or some or one of them, to wit, at L. aforesaid, in the parish and ward aforesaid; and that afterwards, that is to say, on the second day of November, anno domini 1778 aforesaid, a certain commission of bankrupt of our lord the now king, sealed with the great seal of Great Britain, bearing date at Westminster the day and year aforesaid, was in due manner awarded and issued against the said G. W. in his life-time; whereupon the said

G. W.

G. W. in his life-time afterwards, to wit, on the same day as the last aforesaid, at L. aforesaid, in the parish and ward aforesaid, was by the major part of the commissioners in the said commission named and authorized, duly declared bankrupt, and afterwards, to wit, on the eighteenth day of October, anno domini 1781, at L. aforesaid, in the parish and ward aforesaid, died without ever having obtained his certificate under the said commission; and this the said E. is ready to verify: wherefore he prays judgment of the said writ and declaration aforesaid, and that the same may be quashed.

Plea, that the plaintiff had nothing in the close in which, &c. but in common with A. B.

AND the said defendant, by A. B. his attorney, comes and defends the force and injury, and prays judgment of the said bill, because he says, that the said M. and E. neither at the said time when, &c. nor ever since had nor have any thing in the said close in which, &c. or in the said trees and underwood in the said bill mentioned to have been growing there, nor in any of them or in any part thereof, nor in the said goods and chattels in the said bill mentioned, or in any part thereof, but jointly and undivided with A. B. and B. T. who are both still alive, to wit, at, &c. and this, &c.: wherefore, inasmuch as the said A. B. and B. T. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed, &c. R. DRAPER.

Plea to the jurisdiction of the court.

AND the said B. in his proper person, comes and says, that the said court ought not to have further cognizance of the plea aforesaid, because he says, that the cause of action aforesaid (if any accrued to the said A.) accrued to the said A. out of the jurisdiction of this court, to wit, at A. in the county of B. and not at L. in the said declaration mentioned, or elsewhere within the jurisdiction of this court; and this, &c.: wherefore, &c. if the said court can or will have further cognizance of this plea.

Plea, that defendant is a priest in holy orders, and not a yeoman.

AND the said defendant comes and defends the wrong and injury when, &c. and prays judgment of the said writ, because he says, that the said defendant at the time of obtaining the original writ of the said plaintiff in this cause, and before and continually afterwards till this time was and is a priest in holy orders duly constituted, to wit, at, &c. and not a yeoman; without this, that the said J. D. is, or at the day of obtaining the said writ or ever since, was a yeoman, as by the said writ is above supposed; and this, &c.: wherefore he prays judgment of the said writ, and that the same may be quashed. J. EYRE.

AND

Plea in abatement to the jurisdiction, custom to count upon *concessit solvere* in the mayor's court in London when the debt is not a specialty.

BOWERBANK *against* WALKER. } AND now at this day, that is to say, Tuesday next, after eight days of St. Hilary in this same Term, until which day the said J. W. and T. C. had leave to imparl to the said bill, and then to answer the same, &c. as well the said T. B. and Samuel by their said attorney, as the said James and T. C. in their own persons, do come before our said lord the king at Westminster, and the said James and T. C. say, that the city of London is, and from time immemorial hath been, an antient city, and that there now is, and time immemorial hath been, a certain custom used and approved within the same city, that is to say, that if any person be indebted to any other person within the same city in any sum of money upon simple contract, without specialty made between such persons within the said city, that such persons to whom such sum of money was due and owing, may and can have and maintain an action of debt by original bill in the king's majesty's court, holden before the mayor and aldermen of the city of London, for the time being, in the chamber of the Guildhall within the same city, according to the custom of the said city, against such persons so indebted, for the recovery of such sum of money so due and owing as aforesaid, and shall and may, in such original bill, count upon a *concessit solvere*, that is to say, the grant and agreement of persons indebted to pay such sum of money so due and owing as aforesaid, without setting forth the special matter of such simple contract; which said custom, and all other customs of the said city obtained and used from the time aforesaid, by the authority of parliament held at Westminster in the second year of the reign of King Richard the Second, late King of England after the Conquest, to the mayor and commonalty and citizens of the said city, and their successors, ratified and confirmed; and the said James and T. C. further say, that heretofore, to wit, on the tenth day of November, in the twenty-sixth year of the reign of our sovereign lord George the Third, now king of Great Britain, in the court of our said lord the king, held before T. W. esquire, then mayor, and the aldermen of the said city, in the chamber of the Guildhall within the said city, according to the custom of the said city, the said T. B. and Samuel affirmed a certain original bill against the said James and T. C. surviving partners of P. Q. deceased, in a plea of debt of five hundred pounds, upon demand, of lawful money of Great Britain, for the recovery of the said sum of five hundred pounds supposed to be due to the said T. B. and Samuel from the said James and T. C. as surviving partners as aforesaid, upon simple contract without specialty made between the said James and T. C. and the said P. Q. in his life-time; and the said T. B. and Samuel within the said city, and the said James and T. C. say, that after the affirmance of the said bill original, the said bill was removed from and out of the said court before the mayor and aldermen aforesaid, into the court of our said lord the king, before the king him-

himſelf, by virtue of his majeſty's writ of habeas corpus cum cauſâ iſſuing out of the ſaid laſt-mentioned court, and returnable therein immediately on the receipt whereof in Hilary Term now laſt paſt; and thereupon the ſaid T. B. and Samuel have declared againſt the ſaid James and T. C. in manner and form aforeſaid, without the conſent and agreement of the ſaid James and T. C. and this, &c.: whereupon they pray judgment of the ſaid declaration, and that the ſame may be quaſhed, &c. [A general demurrer to, and joinder.

S. SHEPHERD.

Judgment on the above plea in abatement of reſpondeas ouſter.

At which day, before our lord the king at Weſtminſter, come as well the ſaid plaintiffs as the ſaid defendants, by their attornies aforeſaid, and upon which all and ſingular the premiſes being ſeen, and by the Court underſtood, and mature deliberation being thereunto had, for that it ſeems to the court of our ſaid lord the king here, that the ſame plea by the ſaid James and T. C. in manner and form aforeſaid pleaded in abatement, and the matters therein contained, are not ſufficient in law to quaſh the ſaid declaration of the ſaid T. B. and Samuel; therefore it is conſidered, that the ſaid James and T. C. anſwer over to the ſaid declaration, &c. And upon this the ſaid James and T. C. by their ſaid attorney, come and defend the wrong and injury when, &c. and ſay, that they did not undertake or promiſe in manner and form as the ſaid T. B. and Samuel have in their ſaid declaration above complained againſt them; and of this they put themſelves upon the country, and the ſaid T. P. and Samuel do the like: therefore, &c.

In making up the niſi prius record, I think it will be neceſſary to ſet out the declaration, plea in abatement, demurrer and judgment of reſpondeas ouſter, as the whole record muſt be ſhewn, otherwiſe I think the defendant might, upon a writ of error being brought, aſſign for error variance between the judgment roll and the plea roll.

Drawn by Mr. GRAHAM.

ACCOUNT.

SOMERSETSHIRE, to wit: Robert Phillips, late of Partlock, in the county aforesaid, yeoman, was summoned to answer to William Clare, clerk, and Alice his wife, late Alice Phillips, widow, in a plea that he render to him his reasonable account for the time in which he was bailiff of the said Alice, whilst she was sole, and of the said William and Alice, in right of the said Alice, after their intermarriage, &c. And thereupon the said William and Alice, by William Lee their attorney, say, that whereas the said Alice and the said Robert, whilst she the said A. was sole, to wit, on the tenth day of March in the year of our lord 1740, and long before, and from thence continually until her intermarriage with the said William, held together and undivided, as tenants in common, a certain farm, consisting of a messuage and divers, to wit, thirty acres of land, ten acres of meadow, and sixty acres of pasture, with the appurtenances, commonly called and known by the name of West Haddon, otherwise Lower Haddon, in the parish of Winsford, in the county aforesaid, and the said Robert, during all the time aforesaid, had the care and management of the whole tenements, to receive and take the rents, issues, and profits thereof, and as bailiff of the said Alice, of what he received more than his just share and proportion thereof, to render a reasonable account thereof to the said Alice, when he should be thereunto required, according to the statute in such case lately made and provided: and although the said Robert, during all the time aforesaid, at the parish of Winsford aforesaid, hath received more than his just share and proportion thereof, to wit, the whole rents, issues, and profits of the said tenements, with the appurtenances, yet the said Robert, although often required, hath not rendered his reasonable account in this behalf unto the said Alice, whilst she was sole, nor to the said William and Alice, or to either of them, since their intermarriage, but hath hitherto refused, and still refuses, contrary to the form of the said statute. And also for this, that whereas the said William and Alice, in right of the said Alice and the said Robert, afterwards, to wit, on the twenty-fourth day of June, in the year of Our Lord 1743, and from

Declaration in account by the husband and wife against their tenant in common as her bailiff whilst she was sole, for rent of an estate. 2d count, for profits since the marriage.

4. Ann, c. 16, s. 27.

2d count, to render an account of what defendant received more than his reasonable share of profits since the marriage.

from thence continually hitherto, have held together and undivided, as tenants in common, the ſaid tenements, with the appurtenances, and the ſaid Robert, during all the time laſt aforeſaid, had the care and management of the whole tenements aforeſaid, with the appurtenances, to receive and take the rents, iſſues, and profits thereof, and as bailiff of the ſaid William and Alice, in right of the ſaid Alice, of what he the ſaid Robert received more than his juſt ſhare and proportion thereof, to render a reaſonable account to them, when afterwards he ſhould be thereunto required, according to the form of the ſtatute in ſuch caſe made and provided: and although the ſaid Robert, during all the time laſt aforeſaid, at the ſaid pariſh of Winsford, hath received more than his juſt ſhare and proportion thereof, to wit, the whole rents, iſſues, and profits of the ſaid tenements, with the appurtenances, yet the ſaid Robert (although often requeſted) hath not rendered to the ſaid William and Alice, nor to either of them, his reaſonable account in this behalf, but hath hitherto refuſed, and ſtill refuſes, ſo to do, contrary to the form of the ſaid ſtatute, whereby the ſaid William and Alice ſay that they are prejudiced, and have ſuſtained damage to the value of one hundred pounds; and therefore they bring their ſuit, &c.

Declaration in account by one joint tenant againſt two others, as his bailiffs, for his ſhare of the rents of an eſtate, under the ſtatute 4. Anne, c. 16. ſ. 27.

WILLIAM BROOKS, late of, &c. and Jaſon Shepherd, late of, &c. were ſummoned to anſwer to Andrew Hartſhorn of a plea, that they render to him a reaſonable account of the time that they were bailiffs of the ſaid Andrew in Crawley, in the pariſh of Witney aforeſaid, in the county aforeſaid. And thereupon the ſaid Andrew, by James Jefferſon his attorney, ſays, that whereas the ſaid William and Jaſon, on the firſt day of May, which was in the year of Our Lord 1756, and continually from thence until the ſixth day of May, anno Domini 1761, were together jointly the bailiffs of the ſaid Andrew for and during all the ſaid time, taking and receiving all the iſſues and profits of one meſſuage or tenement, with the fulling mills, mill-ſtocks, and utenſils thereto belonging, called and known by the name of Crawley Mills, and of a piece or parcel of meadow ground, called the Ham, containing by eſtimation two acres, and of ſeven acres of meadow ground, and of one acre and an half of meadow ground, and of one acre and an half of coppice, with the appurtenances, ſituate, lying, and being in Crawley, in the pariſh of Witney aforeſaid, in the ſaid county of Oxford, whereof the ſaid Andrew and the ſaid William and Jaſon were jointly poſſeſſed for a certain term of years, to the common profit of them the ſaid Andrew and the ſaid William and Jaſon, and to render a reaſonable account thereof to the ſaid Andrew, when they the ſaid William and Jaſon ſhould be thereunto required by the ſaid Andrew: nevertheleſs the ſaid William and Jaſon (although often requeſted) have not, nor hath either of them, rendered a reaſonable account thereof to the ſaid Andrew, but to render the ſame have, and each

of

of them hath, wholly denied, and ſtill do, and each of them doth, deny to render him the ſame. Damages five hundred pounds, &c.

Declaration in the Exchequer ag rſt bailiff, in account by one tenant in common againſt another.

PEMBROKESHIRE, ſſ. John Campbell Hook, eſquire, a debtor of our ſaid lord the now king, cometh before the barons of the Exchequer, on the day of (in the uſual Exchequer form) of a plea, that he render to the ſaid John Campbell a reaſonable account of the time wherein he was bailiff of the ſaid John Campbell, in the pariſh of Angel, in the ſaid county of Pembroke; for that whereas the ſaid C. D. on the firſt day of January, anno Domini 1764, and from thence continually until the day of the exhibiting of the bill of the ſaid John Campbell, was bailiff of the ſaid John Campbell for a certain farm or tenement, conſiſting of divers, to wit, one meſſuage, two barns, two ſtables, two orchards, two gardens, one hundred acres of land, forty acres of paſture, forty acres of wood, forty acres of underwood, with the appurtenances, called Horn Farm, otherwiſe Horn Tenement, otherwiſe Court-houſe Farm, ſituate, lying, and being in the ſaid pariſh of Angel, in the ſaid county of Pembroke, for and during all the time taking and receiving the iſſues and profits thereof, and whereof the ſaid John Campbell and the ſaid C. D. were ſeiſed undividedly, as tenants in common, to wit, in their demeſne as of fee, that is to ſay, the ſaid John Campbell of one undivided moiety or half part thereof, and the ſaid C. D. of the other undivided moiety or half part thereof, to the common profit of them the ſaid John Campbell and the ſaid C. D. and to render a reaſonable account thereof to the ſaid John Campbell, when he the ſaid C. D. ſhould be thereto afterwards requeſted; yet the ſaid C. D. (although requeſted) hath not rendered any reaſonable or other account thereof, or of any part thereof, for the time aforeſaid, or for any part thereof, to the ſaid John Campbell, but hath hitherto wholly refuſed, and ſtill refuſes, to render the ſame to him. Damages, &c.

Declaration in B. R. in account by one joint tenant againſt another, for receiving more than his ſhare of the rents of an eſtate. See ſtat. 4 Anne, c. 16. ſ. 17. See Opinion *infra*.

LANCASHIRE, ſſ. John Slater complains of William Hill, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, in a plea, that he render to him a reaſonable account of the time that he was bailiff to the ſaid John at Ribcheſter, in the county of Lancaſter; for that whereas the ſaid John and William heretofore, to wit, on the firſt day of January, in the year of Our Lord 1788, and continually from thence until the commencement of this ſuit, have held together, as joint-tenants, a certain tenement, conſiſting of [here deſcribe the premiſes at the time of the demiſe by the defendant to the preſent tenant, with convenient certainty, as nearly as ſuppoſed to be ſet out in the leaſe]; and the ſaid William, during all the time aforeſaid, had the care and management of the whole of the ſaid tenement, with the appurtenances, to receive and take the

rents, issues, and profits thereof, and as bailiff of the said John, of what he received more than his just share and proportion of the said rents, issues, and profits, to render a reasonable account thereof to the said John, when he the said William should be thereunto required, according to the statute in such case made and provided: and although the said William, during the time aforesaid, at Ribchester aforesaid, in the county aforesaid, hath received more than his just share and proportion, to wit, the whole of the said rents, issues, and profits of the said tenement, with the appurtenances, yet the said William, although often requested, hath not rendered his reasonable account in this behalf to the said John, but hath hitherto refused, and still refuses, to the damage of the said John of twenty pounds, and therefore he brings his suit, &c. Pledges, &c. THO. BARROW.

Opinion upon the following case. Qu. Whether a lease by Pye to the plaintiff and defendant of a tenement, and articles of co-partnership under seal, between plaintiff, defendant, and Pye, with a penalty of forty pounds, to compel their performance, upon the same sheet of paper, require one stamp or two? and what remedy has one joint tenant against another who receives all the rents?

I Think the articles of agreement for the co-partnership are not binding upon the parties for want of a separate stamp; for one stamp will not be sufficient for two separate deeds, which the lease and articles certainly are in their own nature, and which they import to be by being complete in themselves under different seals of different dates, and differing in their subject matter. The only question therefore as to the validity of each will be, "Which was first *executed?*" And as the lease stands first upon the paper, is of a prior date to the articles, and is referred to by them, I take it for granted that it was first executed: for these reasons I take the lease to be a good one; and if so, Slater and Hill are *joint tenants* of the premises thereby demised to them. And though Slater has not assented to the demise by Hill, and therefore is not bound by it, yet I think if he can prove that Hill has received any rent, he will be entitled to recover his share of it from Hill in an action of Account, by virtue of the statute of 4. Anne, c. 10. s. 27. I must observe however, that though the articles of co-partnership are not binding, the assignees of Pye will be entitled to share with Slater and Hill the stock in trade; for as to that, they became joint proprietors by the purchase of it jointly. As the articles are not stamped, I am of opinion neither of the parties can maintain an action against the other for the penalty contained in them; but they may be at any time made good by the payment of the penalty at the Stamp-office, and having them stamped.

THO. BARROW.

Declaration in account by plaintiff, an infant, by *prochein ami*, against defendant, for not accounting for the rents of lands which were held as tenants in common.

HEREFORDSHIRE, *ss.* Samuel Fincher *v.* John Warburton, &c. in a plea, that he render to him his reasonable account for the time in which he was bailiff of the said Samuel in the several parishes of H. and I. in the said county of H. And thereupon the said Samuel, by A. B. his attorney, who is admitted by the court of our lord the king here to prosecute for the said Samuel, who is an infant within the age of twenty-one years, as the next friend of the said Samuel, complains, for that whereas the said John,

John, and Margaret his wife, in right of the ſaid Margaret and the ſaid Samuel, and divers other perſons whoſe names are to the ſaid Samuel unknown, heretofore, to wit, on, &c. and long before, and from thence continually hitherto have held together as tenants in common certain premiſes, to wit, ten meſſuages, ten cottages, two hundred acres of land, one hundred acres of meadow, one hundred acres of paſture, and one hundred acres of wood, with the appurtenances, in the ſaid ſeveral pariſhes of H. and I. in the county aforeſaid, and the ſaid John, during all the time aforeſaid, had the care and management of the whole tenements aforeſaid, to receive and take the rents, iſſues, and profits, and as bailiff of the ſaid Samuel, of what he received more than his juſt ſhare and proportion thereof, to render a reaſonable account thereof to the ſaid Samuel, and his ſhare thereof, when he ſhould be thereto requeſted, according to the ſtatute in ſuch caſe made and provided: and although the ſaid John, during all the time aforeſaid, at the ſeveral pariſhes aforeſaid, hath received more than his juſt ſhare and proportion thereof, to wit, the whole rent, iſſues, and profits of the ſaid tenements, with the appurtenances, yet the ſaid John, although often requeſted, hath not rendered a reaſonable account to the ſaid Samuel, but he ſo to do hath hitherto wholly refuſed, and ſtill refuſes, contrary to the form of the aforeſaid ſtatute. And whereas the ſaid John *and Margaret his wife, in right of the ſaid Margaret*, and the ſaid Samuel heretofore, to wit, on, &c. and from thence continually hitherto have held together, as tenants in common, divers, to wit, two undivided five parts of certain other premiſes, to wit, ten other meſſuages, &c. with the appurtenances, in the ſaid ſeveral pariſhes of H. and I in the county aforeſaid, and the ſaid John, during all the time aforeſaid, had the care and management of the whole of the ſaid two undivided five parts of the tenements laſt aforeſaid, to receive and take the rents, iſſues, and profits thereof, and as bailiff of the ſaid Samuel, of what he received more than his juſt ſhare and proportion thereof, to render a reaſonable account to the ſaid Samuel, when he ſhould be thereto requeſted, according to the ſtatute in ſuch caſe made and provided: and although the ſaid John, during all the time laſt aforeſaid, at the ſeveral pariſhes aforeſaid, hath received more than his juſt ſhare and proportion thereof, to wit, the whole rent, iſſues, and profits of the ſaid two undivided five parts of the ſaid laſt-mentioned tenements, with the appurtenances, yet the ſaid John, although often requeſted, hath not rendered ſuch reaſonable account to the ſaid Samuel, but he ſo to do hath hitherto wholly refuſed, and ſtill refuſes, contrary to the form of the aforeſaid ſtatute. And whereas, &c. (this count the ſame as the laſt, only omitting what is in italic). And whereas the ſaid John heretofore, to wit, on, &c. and from thence continually hitherto, at the ſaid ſeveral pariſhes of H. and I. in the county aforeſaid, was and hath been bailiff to the ſaid Samuel of one undivided fifth part of certain other premiſes, to wit, ten other meſſuages, &c. with the appurtenances,

2d count as tenant in common of two undivided five parts in other premiſes, &c.

3d count.

4th count of one undivided fifth part of other premiſes.

tenances, in the ſaid ſeveral pariſhes of H. and I. in the county aforeſaid, and the rents, iſſues, and profits thereof, for and during all that time received and had, to render a reaſonable account thereof to the ſaid Samuel when he ſhould be thereto requeſted; yet the ſaid John, although often requeſted, hath not rendered a reaſonable account to him the ſaid Samuel, but he ſo to do hath hitherto wholly refuſed, and ſtill refuſes, to the damage of the ſaid Samuel of two hundred pounds, and therefore he brings his ſuit, &c. V. LAWES.

Declaration in account by *executor* of *tenant in common* for the iſſues and profits of three undivided fourth parts againſt defendant, as bailiff. 1st count as *executor*. 2d. in his own right.

JOHN STILL, *executor of the laſt will and teſtament of N. S. his late brother, deceaſed*, complains of Simpſon Still, being, &c. of a plea, that he render to the ſaid John, *executor as aforeſaid*, a reaſonable account of the time during which he has been, *or was*, the bailiff of the ſaid John, *or of the ſaid N. in his lifetime*, in the ſeveral pariſhes of Cowdon and Eaton-bridge in the ſaid county of K.; for that whereas the ſaid Simpſon, *in the lifetime of the ſaid N. to wit.* on, &c. and continually from thence until the time of exhibiting, &c. *or until, &c. on which day the ſaid N. died, to wit, at, &c* was the bailiff of the ſaid John, *or of the ſaid Nicholas*, for and during all that time taking and receiving all the iſſues and profits of one barn, &c. with the appurtenances, called or known by the name of, &c. ſituate, ſtanding, lying, and being in the ſeveral pariſhes of Cowdon and Eaton-bridge aforeſaid, in the ſaid county of Kent, whereof the ſaid John, *or Nicholas*, and Simpſon, *in the lifetime of the ſaid Nicholas*, were ſeiſed in their demeſne as of fee undividedly as tenants in common, to wit, the ſaid John, *or Nicholas*, of three undivided fourth parts, and the ſaid Simpſon of the other undivided fourth part thereof, to the common benefit of them the ſaid John, *or Nicholas*, and Simpſon, and to render a reaſonable account thereof to the ſaid John, *or to the ſaid Nicholas, in his lifetime*, when he the ſaid Simpſon ſhould be thereunto requeſted; yet the ſaid Simpſon, although often requeſted hath not rendered a reaſonable account thereof to the ſaid *Nicholas in his lifetime or to the ſaid* John, *executor as aforeſaid, ſince the death of the ſaid Nicholas*, but to render the ſame hath hitherto wholly refuſed, and ſtill doth refuſe, *to render the ſame to the ſaid John, executor as aforeſaid*, to the damage of the ſaid John, *executor as aforeſaid*, of l. [2d. count, omitting the words in italic] and therefore he brings ſuit, &c. [*Profert in curia* of the letters teſtamentary] Pledges.

Declaration by huſband and wife, againſt a tenant in common with the wife, of a copyhold eſtate.

DURHAM, *ſſ.* John Hunter, and Elizabeth his wife, complain of John Lumley, being in the cuſtody of the marſhal of the marſhalſea of our ſovereign the now king, before the king himſelf,

ſelf, of a plea, that he render to the ſaid John, and Elizabeth his wife, a reaſonable account of the time wherein he was bailiff to the ſaid John H. and Elizabeth his wife, at Ryton in the ſaid county of Durham; for that whereas the ſaid John Luiſley, on the ſecond day of February, *anno Domini* 1768, was bailiff of the ſaid John Hunter and Elizabeth his wife of three meſſuages, three cottages, and two acres of land, with the appurtenances, ſituate and being at Ryton aforeſaid, within the manor of Cheſter, in the ſaid county of Durham, and parcel of that manor, for and during all that time taking and receiving the iſſues and profits thereof, and whereof the ſaid John Hunter and Elizabeth his wife, in right of the ſaid Elizabeth, and the ſaid John Luiſley, were individually, and as tenants in common, ſeiſed, to wit, in their demeſne as of fee at the will of the lord, according to the cuſtom of the ſaid manor, that is to ſay, the ſaid John Hunter and Elizabeth his wife, in right of the ſaid Elizabeth, of one undivided moiety thereof, and the ſaid John Luiſley of the other undivided moiety thereof, to the common profit of them the ſaid John Hunter and Elizabeth his wife, and the ſaid John Luiſley, and to render a reaſonable account thereof to the ſaid John Hunter and Elizabeth his wife, when he ſhould be thereto afterwards requeſted; yet the ſaid John Luiſley, although often requeſted, hath not yet rendered any reaſonable or other account thereof, or of any part thereof for the time aforeſaid, or for any part thereof, to the ſaid John Hunter and Elizabeth his wife, or to either of them, but hath hitherto wholly refuſed, and ſtill doth refuſe to render the ſame to them; wherefore the ſaid John Hunter and Elizabeth his wife ſay that they are injured, and have ſuſtained damage to the value of twenty pounds, and therefore they bring their ſuit. Pledges, &c.

No bail in this action till after judgment *quod computet*, 1. Lev. 300.

Declaration againſt a bailiff for an account of divers goods and merchandizes.

CITY OF BRISTOL, *ſſ.* J. M. complains againſt G. H. being, &c. in a plea, that he render to the ſaid J. a reaſonable account of the time in which he was bailiff of the ſaid J. for this, to wit, that whereas the ſaid G. from the twenty-ſeventh day of May, in the year of Our Lord 1740, until the firſt day of October in the year of Our Lord 1743, at the city of Briſtol aforeſaid, in the county of the ſame city, was the bailiff of the ſaid J. and during that time had there the care and adminiſtration of divers goods and merchandizes of the ſaid J. to wit, two hundred and twenty-two groſs of corks and eight caſks of the ſaid J. of the value of twenty pounds of lawful money of Great Britain, to be merchandized and made profit of for the ſaid G. to render account for the ſame to the ſaid J. when he ſhould be thereunto after required; yet the ſaid G. although often required, hath not rendered a reaſonable account for the ſame to the ſaid J. but hath hitherto altogether refuſed, and ſtill doth refuſe ſo to do, to the damage of the ſaid J. of twenty pounds, and therefore he brings his ſuit.

Plea, that the goods were destroyed by fire.

And the said G. by J. L. his attorney, comes and defends the wrong and injury when, &c. and says, that the said J. ought not to have his said action against him, because he says, that true it is that he the said G. had the care and administration of the said goods and merchandizes of the said J. to be merchandized and made profits of for the said J. to render a reasonable account for the same to the said J. as the said J. hath in and by his said declaration above supposed; nevertheless the said G. for plea, says, that after the delivery of the said goods and merchandizes to the said G. for the purpose aforesaid, and before the said G. could sell or merchandize the said goods and merchandizes, or any part thereof, or could make any profit thereof for the said J. to wit, on the tenth day of September 1740 aforesaid, the said goods and merchandizes were casually destroyed by fire without the neglect or default of the said G. to wit, at the city of B. aforesaid; and this. &c. wherefore, &c.

Replication, that the goods were not destroyed by fire.

And the said J. says, that by reason of any thing in the said plea of the said G. above alledged, he ought not to be barred from having and maintaining his account aforesaid against him, because he says, that the said goods and merchandizes were not casually destroyed by fire without the neglect or default of the said G. as by his said plea he hath above alledged; and this he prays may be enquired of by the country, &c.

Declaration by administratrix against defendant as bailiff of her husband of the moiety of premises.

YORKSHIRE, *ss.* D. E. administratrix of all and singular the goods and chattels, rights and credits which were of T. E. her late husband deceased, at the time of his death, who died intestate, complains of O. G. being, &c. in a plea, that he render to the said D. his reasonable account from the time that he was bailiff of the said T. for this, to wit, that whereas the said O. on the twenty-ninth day of September, in the year of Our Lord 1747, at B. in the said county of York, was bailiff of the said T. of the moiety of one messuage called by the name of West Fryer House, and forty acres of land, forty acres of meadow, and forty acres of pasture, with the appurtenances in B. aforesaid, in the said county of York, which premises the said O. had, from the said twenty-ninth of September 1747, to the twenty-ninth of April 1748, and for all the same time had and received the issues and profits of the said moiety of the said messuage and tenement aforesaid, to render his reasonable account thereof to the said T. in his life-time, when he should be thereunto requested; nevertheless the said O. although often requested, that reasonable account to the said T. in his life-time, or to the said D. since the decease of the said T. to which said D. administration of all and singular the goods, chattels, rights and credits which were of the said T. at the time of his death, by W. W. doctor of laws, commissary and keeper general of the exchequer and prerogative court of the most reverend father in God M. by divine Providence, Lord Archbishop of York, primate of England and metropolitan, to whom the granting of that administration of

right

right did belong, ſince the deceaſe of the ſaid T. that is to ſay, on the fourteenth of October 1749, at B. aforeſaid, in due form of law was committed, hath not rendered, but he the ſaid T. to render ſuch reaſonable account to the ſaid T. in his life-time altogether denied, and the ſame to render to the ſaid D. ever ſince the deceaſe of the ſaid T. hitherto hath altogether denied, and ſtill doth deny; whereupon the ſaid D. ſays ſhe is injured, and hath damage to the value of twenty pounds, and thereof ſhe brings ſuit, &c. And the ſaid D. brings into court here the letters of adminiſtration aforeſaid, granted to the ſaid D. by which it appears to the court here, that the ſaid D. is adminiſtratrix of all and ſingular the goods, chattels, rights and credits which were of the ſaid T. her late huſband deceaſed, at the time of his death, the date whereof is the ſame day and year for that purpoſe mentioned.

Declaration by *infant*, by guardian, againſt defendant as *bailiff* of moiety of premiſes.

G. B. by D. E. widow, his mother, who is admitted by the court of our lord the king here to proſecute for the ſaid G. who is under the age of twenty-one years, as next friend of the ſaid G. complains againſt T. G. being, &c. in a plea, that he render to the ſaid G. his reaſonable account from the time that he was bailiff of the ſaid G. for this, to wit, that whereas the ſaid T. on the firſt day of May 1748, at B. in the county of York, was bailiff of the ſaid G. of the moiety of one meſſuage called by the name of Weſt Fryer Houſe, and of forty acres of land, forty acres of meadow, and ten acres of paſture, with the appurtenances in B. aforeſaid, in the ſaid county of York, which premiſes the ſaid T. had, from the firſt day of May until the ſeventh day of June 1780, and for all the ſame time had and received the iſſues and profits of the ſaid moiety of the ſaid meſſuage and tenement aforeſaid, to render his reaſonable account thereof to the ſaid G. when he ſhould be thereto requeſted; nevertheleſs the ſaid T. although often requeſted, that reaſonable account to the ſaid G. hath not rendered, but the ſame to him to render hath hitherto altogether refuſed, and ſtill doth refuſe, to the damage of the ſaid G. of the ſaid two hundred pounds; and therefore he brings ſuit, &c.

Action of account by one joint tenant againſt another, for money receive[illegible]ing a mare [illegible] hire. Statute [illegible] c. 16. §. 27. gives this action. Vide the ſame, and Com. Dig. vol. 1. 96. B. & Co. Rep. 272.

KENT, *ſſ.* James Jefferys *v.* Richard Hares, &c. in a plea, that he render to him a reaſonable account for the time that he was bailiff of the ſaid James; for that whereas he the ſaid defendant for a long time, to wit, from the firſt day of June, *anno Domini* 1753, until, &c. at, &c. was proprietor of one undivided moiety and bailiff of the ſaid plaintiff of the other undivided moiety of a certain mare, and during that time had the care and management of the ſaid mare, and the letting out to hire of the ſaid mare for the advantage and profit of the ſaid defendant and plaintiff, to render a reaſonable account thereof to the ſaid plaintiff when he ſhould be thereto afterwards requeſted; yet the ſaid defendant, although often requeſted, hath not yet rendered the ſaid reaſonable account to the ſaid plaintiff, but he ſo to do hath hitherto wholly refuſed, and ſtill refuſes, to the ſaid plaintiff his damage of ſixty pounds; and therefore he brings ſuit, &c. Pledges, &c.

GENERAL

GENERAL INDEBITATUS ASSUMPSIT.

ON AWARDS.

Declaration in B. R. in general *indebitatus assumpsit* by executors against an administratrix upon an award entered into by testator and intestate in their respective life times.

MIDDLESEX, to wit. J. R. clerk, and A. J. executors of the last will and testament of Mary H. deceased, complain against Isabella H. being, &c. for that whereas on the 11th day of June, A. D. 1784, at, &c. aforesaid, divers disputes, differences, and controversies had arisen, and were then and there depending between the said Mary H. in her lifetime, and one John Hughes; and thereupon, for the putting an end to the said disputes, differences, and controversies, the said Mary H. in her lifetime and the said John H. on the same day and year, at, &c. aforesaid, submitted themselves to stand to the award, order, arbitrament, final end and determination of F. W. of, &c. and R. G. of, &c. arbitrators indifferently named, elected, and chosen, as well on the part and behalf of the said John H. as of the said Mary H. to arbitrate, award, order, judge, and determine of and concerning the said disputes, differences, and controversies, so as the award should be made in writing ready to be delivered on or before the 24th day of September then next ensuing; and whereas afterwards, and within the time in that behalf limited for the said F. W. and R. G. to make their award concerning the premises as aforesaid, to wit, on the said twenty-fourth day of September, A. D. 1764, the said F. W. and R. G. in due manner made their award, order, and determination in writing of and concerning the premises so referred to them as aforesaid, then ready to be delivered to the said Mary H. and John H. and bearing date the day and year last aforesaid; whereby the said F. W. and R. G. did then and there amongst other things award and order that the said John H. his heirs, executors, or administrators, should, on or before the 25th of March next ensuing the date of the said award, well and truly pay, or cause to be paid unto the said Mary H. her executors, administrators, or assigns, the sum of nine hundred and eighty-three pounds and twopence halfpenny, with interest for the same after the rate of four pounds by the hundred by the year from the day of the date of the said award; and the said F. W. and R. G. did then and there by their said award farther award and order that the said John H. should within the space

ſpace of one month then next enſuing execute to the ſaid Mary H. a general releaſe of all actions, ſuits, damages, accounts, reckonings, and demands whatſoever, from the beginning of the world to the day of the date of the therein recited bonds of arbitration; and that the ſaid Mary H. ſhould within the ſame time in like manner execute to the ſaid John H. a like general releaſe of all actions, ſuits, damages, accounts, reckonings, and demands whatſoever, from the beginning of the world to the day of the date of the ſaid recited bonds of arbitration; of all which ſaid premiſes, he the ſaid John H. afterwards, to wit, on the twenty-ſeventh day of September in the year aforeſaid, at, &c. aforeſaid, had notice: and the ſaid J. and A. in fact ſay, that the ſaid John H. afterwards, and after the making of the ſaid award, to wit, on the 1ſt day of October, A D. 1765, at, &c. aforeſaid, died inteſtate, poſſeſſed of and entitled unto divers goods, chattels, and effects of great value, to wit, of the value of three thouſand pounds: and the ſaid J. and A. further ſay, that adminiſtration of all and ſingular the goods, chattels, and credits, which were the goods, chattels, and credits of the ſaid John H. at the time of his death, after the death of the ſaid John Hughes, to wit, on, &c. at &c. aforeſaid, by F. by divine Providence archbiſhop of Canterbury, primate of all England and metropolitan, was in due manner committed to the ſaid Iſabella, to wit, at, &c. aforeſaid; and by virtue thereof ſhe the ſaid Iſabella, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, became and was poſſeſſed of divers goods and chattels, which were the goods and chattels of the ſaid John H. at the time of his death: and the ſaid J. and A. further ſay, that the ſaid Mary H. afterwards, to wit, on, &c. at, &c. aforeſaid, made her laſt will and teſtament in writing, and thereby conſtituted and appointed them the ſaid J. and A. executors thereof; and afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, died; and the ſaid J. and A. further ſay, that the ſaid ſum of nine hundred and eighty-three pounds and twopence halfpenny, in the ſaid award mentioned, at the time of the death of the ſaid Mary H. was wholly due and owing and unpaid to the ſaid Mary H.: by reaſon of which premiſes the ſaid Iſabella as adminiſtratrix as aforeſaid, became liable to pay to the ſaid J. and A. as executors as aforeſaid, the ſaid ſum of nine hundred and eighty-three pounds and twopence halfpenny, in the ſaid award mentioned, together with intereſt for the ſame from the day of the date of the ſaid award after the rate of four pounds per cent per annum; and being ſo liable, ſhe the ſaid Iſabella in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, undertook, and faithfully promiſed the ſaid J. and A. to pay them the ſaid ſum of money in the ſaid award mentioned, together with intereſt for the ſame as aforeſaid, when ſhe the ſaid Iſabella ſhould be thereto afterwards requeſted. And whereas the ſaid Iſabella, as adminiſtratrix of the ſaid John H. as aforeſaid, afterwards, to wit, on the 11th day of June, A. D. 1772, at, &c. aforeſaid, was indebted

2d count more general.

indebted to the ſaid J. and A. as executors of the ſaid Mary H. as aforeſaid, in one thouſand pounds of lawful, &c. upon and by virtue of a certain other award made by the ſaid F. W. and R. G. upon and in purſuance of a certain other ſubmiſſion before that time made by the ſaid John H. and Mary H. to the award, order, arbitrament, final end, and determination of the ſaid F. W. and R. G. of and concerning all and all manner of action and actions, cauſe and cauſes of action, ſuits, bills, bonds, ſpecialties, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages, and demands whatſoever, at any time or times before the ſaid laſt mentioned ſubmiſſion had, made, moved, brought, commenced, proſecuted, done, and ſuffered, committed or depending by or between them or either of them; and being ſo indebted, &c. [promiſe to pay]. 3d count, for money had and received by the defendant as adminiſtratrix, to the plaintiff's uſe; and common concluſion to all the counts, " that defendant had not paid the ſeveral ſums of money to the plaintiffs as executors." (For concluſions to declarations in Aſſumpſit, ſee beginnings and endings to Declarations.) Damages two hundred pounds.

Declaration in B. R. in general indebitatus aſſumpſit on an award: Plaintiff, a ſurveyor, had taken ſurveys and made plans of defendant's eſtate, with a ſpecial count, as under.

SALOP, *ſſ.* Robert Hale complains of John Charlton Kinchant, eſquire, being, &c. for that whereas, before the making of the promiſe and undertaking of the ſaid defendant, hereafter next mentioned, to wit, on, &c. at, &c. divers diſputes and differences had ariſen and were then ſubſiſting between the ſaid Robert and the ſaid John Charlton, and an action had been thereupon brought, and was depending in his majeſty's court of King's Bench at Weſtminſter, in the county of Middleſex, by and at the ſuit of the ſaid Robert, againſt the ſaid John Charlton, touching and concerning a certain demand of him the ſaid Robert againſt the ſaid John Charlton, to a large amount, to wit, to the amount of one hundred pounds of lawful money of Great Britain; on account of which ſaid demand he the ſaid Robert had before then delivered to the ſaid John Charlton a certain bill conſiſting of ſeveral items, and (amongſt other items in the ſaid bill contained) there was a certain item of, &c. for the ſurvey and plan of a certain eſtate, called Park Eſtate, before then made by him the ſaid Robert for him the ſaid John Charlton: and whereas, for the putting an end to the ſaid diſputes and differences, the ſaid Robert and the ſaid John Charlton, before the making of the promiſe and undertaking of the ſaid John Charlton hereafter next mentioned, to wit, on the day and year aforeſaid, at, &c. aforeſaid, ſubmitted themſelves to the award, order, arbitrament, final end, and determination of one J. L. gentleman, an arbitrator indifferently named, elected, and choſen, as well on the part and behalf of the ſaid Robert, as of the ſaid John Charlton, to arbitrate, award, order, judge, and determine of and concerning the ſaid diſputes and differences: and whereas, afterwards, to wit, on, &c. at, &c. the ſaid J. L. the arbitrator aforeſaid, having taken upon himſelf

himself the burthen of the said arbitration, in due manner made his award and determination in writing, of and concerning the premises so referred to him as aforesaid, bearing date the day and year last aforesaid, and thereby then and there awarded and declared that he had examined several witnesses on the subject of the said Robert's demand on the said John Charlton, and thought the said Robert had sufficiently established the several items of his said bill, save the said item of, &c. for a survey and plan of Park Estate aforesaid; and as to that item the said Robert had agreed to deduct, &c.: and the said L. further awarded and declared, that he had taxed and settled the bill of costs (that is to say, the said Robert's bill of costs in the said action so depending as aforesaid) at sixteen pounds eleven shillings and twopence, so that the said Robert's then present demand would stand as underneath, (that is to say, as the same was and is stated underneath the said award), the balance amounting to thirty-one pounds nine shillings and three-pence, as by the said award more fully appears; of which said award the said John Charlton afterwards, to wit, on the day, &c. aforesaid, at, &c. aforesaid, had notice: by reason of which said several premises the said John C. became liable to pay to the said Robert the said sum of thirty-one pounds nine shillings and three pence, so awarded to him as aforesaid, when he the said John C. should be thereto afterwards requested; and being so liable he the said John C. undertook, &c. Another count upon another award in another action. And whereas, before the making of the promise and undertaking of the said John C. hereafter next mentioned, certain articles had been entered into between him the said John C. and B. Oliver, and the reverend Mr. Paleston, and divers other persons, for the fighting of a main of cocks at a certain place called Whitchurch, in the said county of Salop; and thereupon heretofore, to wit, on the 8th day of June, A. D. 1778, at S. aforesaid, in the county aforesaid, in consideration that the said Robert, at the special instance of the said J. C. would do every thing contained in the said articles on the behalf of him the said John C. and would indemnify him from all covenants and agreements therein on his part, he the said John C. then and there undertook and faithfully promised the said Robert to pay him the sum of five pounds at any time after the said covenants and agreements were performed, or the said articles delivered up to be cancelled, or were otherwise become void: and the said Robert avers that he, confiding in the said last mentioned promise and undertaking of the said John C. did every thing contained in the said articles on behalf of him the said John C. and indemnified him from all agreements and covenants therein on his part, to wit, at S. aforesaid, in the county aforesaid, whereof the said John C. afterwards, to wit, on the 1st July, in the year last aforesaid, there had notice; and by means of the said several premises last aforesaid, he the said J. C. according to the tenor and effect of his said last mentioned promise and undertaking, then and

A special count to pay money in consideration of indemnity. See that head under Special Assumpsit.

and there became liable to pay the ſaid ſum of five pounds to the ſaid Robert when he the ſaid John C. ſhould be thereto afterwards requeſted. (*a*) Count for work and labour as a ſurveyor, *quantum meruit*; another count for journies, *quantum meruit*; money laid out and expended, had and received, account ſtated; and common concluſion to the whole, &c.

(*a*) For theſe counts, ſee Morg. Richardſon, Impey; and for concluſion, ſee beginnings and endings of Declarations.

Declaration on a ſubmiſſion to arbitration, and an award made awarding money to be paid by defendant to plaintiff, againſt defendant, for not [paying] the ſame.

CUMBERLAND, to wit. George Atkinſon, late, &c. gentleman, was attached to anſwer Thomas Whitefield of a plea of treſpaſs on the caſe, &c. and thereupon the ſaid Thomas, by A. B. his attorney, complains, that whereas on the 10th of November 1760, at Penrith in the ſaid county, divers differences of accounts and diſputes had ariſen, and were then and there depending between the ſaid plaintiff and the ſaid defendant, and thereupon for putting an end to the ſaid differences and diſputes, they the ſaid Thomas and George, on the ſame day and year aforeſaid, at P. aforeſaid, ſubmitted themſelves to ſtand to the award, arbitrament, and final determination of E. O. and J. S. provided they ſhould give in their award in writing of and concerning the premiſes in the courſe of one calendar month then next enſuing; and if the ſaid arbitrators would not end the diſputes amicably between themſelves, then to ſtand to the award and final deciſion of an umpire by the ſaid arbitrators to be indifferently choſen, provided the ſaid umpire ſhould give in his ſaid award and final determination in writing in the ſpace of two calendar months then next following; and thereupon afterwards, to wit, on the ſame day and year aforeſaid, at P. aforeſaid, in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid G. had undertaken and faithfully promiſed (mutual promiſes). And the ſaid plaintiff, in fact, ſays, that afterwards, and before the expiration of one calendar month from the time of making the ſaid ſubmiſſion, to wit, on the ſaid 8th of December, in the year aforeſaid, at P. aforeſaid, they the ſaid E. and I. took upon themſelves the burthen of the ſaid award, and then and there in due manner made and gave in their award and final determination in writing of and concerning the premiſes ſo ſubmitted to them as aforeſaid, and by the ſaid award did then and there award and order that all ſuits and controverſies whatſoever had, moved, or depending between the ſaid parties touching the difference of accounts to the day of the date of the ſaid award, ſhould ceaſe and be no further proſecuted; and they did thereby further award that the ſaid defendant ſhould pay, or cauſe to be paid, the ſum of ſeventy pounds to the ſaid plaintiff, on or before the firſt of January then next following; and they did further award, that the ſaid plaintiff ſhould

pay

pay and bear all expences anywife relating to the faid differences; and laftly, they did thereby award that the faid parties fhould give each to the other general releafes from the beginning of the world to the day of making the faid award; of all which premifes the defendant on the 8th of December, in the year aforefaid, at, &c. had notice; and although all fuits and controverfies whatfoever had, moved, or depending between the faid parties touching the faid difference of accounts to the faid 8th of December, did then and there on the part and behalf of the faid plaintiff, ceafe and were not further profecuted, yet, &c. defendant did not pay the faid bill on or before the faid 1ft of January, &c.

JAMES WALLACE.

Declaration in Special Affumpfit for not performing an award made by an umpire upon a parole fubmiffion of all matters in difference to two arbitrators, with a power to nominate fuch umpire, if they could not agree. 2d. count, upon a very fpecial demife by agreement, on plain paper, between plaintiff and defendant, of lands and houfes, &c. for not paying rent, and not repairing, &c. 3d and 4th counts, ufe and occupation. 5th. Indebitatus Affumpfit for money awarded by umpire under the circumftances of the above reference.

BERKSHIRE, to wit. Edward Seymour efquire complains of Richard Povey being, &c. for that whereas, on the firft day of February 1788, at, &c. divers difputes, differences, and controverfies had before that time arifen, and were then depending between the faid Edward and the faid Richard, and thereupon, for putting an end to the faid difputes, differences, and controverfies, the faid Edward and the faid Richard, on the fame day and year aforefaid, at, &c. fubmitted themfelves, and then and there agreed to fubmit themfelves, to ftand to, abide, obferve, perform, and fulfil the order, rule, and determination of Thomas Spanfwich, of the parifh of Lambourne in the faid county of Berks, and Thomas Bacon of the parifh of Ramfbury, in the county of Wilts, indifferently chofen by the faid Edward and the faid Richard, to fettle all and all manner of debts, differences, quarrels, difputes, reckonings, agreements, and all other dues and demands whatfoever, both at law and in equity, or otherwife, howfoever then fubfifting, or which might thereafter occur; and it was then and there further agreed, that the opinion, award, and determination of the faid Thomas Spanfwich and Thomas Bacon, touching the matters in queftion, fhould be final, and delivered in writing, and figned by them, by the twenty-eighth day of February 1788; but if they the faid T. S. and T. B. the referees, fhould not be able to fettle the aforefaid difputes and differences, then and in that cafe the faid Edward and the faid Richard did thereby empower them the faid T. S. and T. B. to choofe and fix upon fome other perfon whofe determination fhould be likewife final; and the faid agreement being fo made as aforefaid, afterwards, to wit, on the fame firft day of February 1788, at, &c. in confideration that the faid Edward, at the fpecial inftance and requeft of the faid Richard, had then and there undertaken and faithfully promifed to perform and fulfil the before mentioned agreement in all things on his part and behalf to be performed and fulfilled, he the faid Richard undertook, and then and there faithfully promifed the faid Edward, that he the faid Richard would perform and fulfil the faid agreement in all things therein contained on his part and behalf to be performed and fulfilled; and the faid Edward in fact fays, that the faid T. S. and T. B. being fuch arbitrators as aforefaid, could not agree

agree in opinion so as to settle the said matters in dispute at the time of the making the said agreement between the said Edward and the said Richard, and were not able to settle the aforesaid disputes and differences between them; and thereupon afterwards, and before the said twenty-eighth day of February 1788, to wit, on the twenty-seventh day of February 1788, at, &c. the said T. S. and T. B. being such arbitrators as aforesaid, by virtue of the said power so given to them as aforesaid, and by and with the approbation and consent of the said Edward and the said Richard, and by their direction, did nominate, appoint, choose, and fix on one Samuel Ballard, to be an umpire or a third person to arbitrate, award, order, and finally determine of, in and concerning all matters in difference between the said Edward and the said Richard, as well on the part and behalf of the said Edward as the said Richard, so that he the said Samuel Ballard should make and set down his award and umpirage in writing, ready to be delivered to the said Edward and Richard on or before the eleventh day of March next. And the said Edward further says, that the said Samuel Ballard being indifferently chosen such umpire as aforesaid, and having taken upon himself the charge and burthen of the said award or umpirage, did afterwards, and within the time in that behalf limited for the making of the said award or umpirage as aforesaid, to wit, on the eleventh day of March 1788, at, &c. in due manner made and set down his award or umpirage in writing, of and concerning the matters in difference at the time of the making of the said first mentioned agreement so referred to him as aforesaid, then ready to be delivered to the said Edward and the said Richard, bearing date the same day and year last aforesaid; and thereby he the said Samuel Ballard did, amongst other things, award, order, decree, and determine of and concerning the aforesaid matters in difference at the time of making the said agreement, that the said Richard, his executors or administrators, should and did, on or before the twentieth day of March then instant, pay or cause to be paid to the said Edward, his executors or administrators, at or in the then dwelling-house of him the said Edward, situate in Lambourne Woodlands, in the said county, the full sum of one hundred and eighty pounds seven shillings and nine-pence of lawful, &c. in full payment, discharge, and satisfaction of and for all rent, and all monies, debts, and demands whatsoever, due or owing unto the said Edward by the said Richard, on any account whatsoever, at any time before and on the tenth day of October 1787; and the said Samuel Ballard did thereby, by his said award or umpirage, further award, order, decree, and determine, that all actions, suits, quarrels, controversies, and disputes whatsoever had, moved, brought, commenced, or depending between the said parties in difference, which in any manner related to or concerned the premises to him the said Samuel Ballard submitted as aforesaid, should from thenceforth cease, determine, and be finally ended, and no further prosecuted or proceeded in by them or any of them, or by their or either of their means, consent, or procurement; and the said Samuel

muel Ballard did then and there, by his said award or umpirage, further award, order, decree, and determine, that the said Edward and Richard should, within the space of one month next after the payment of the aforesaid sum of one hundred and eighty pounds seven shillings and nine pence, at their joint and equal expence, seal and execute unto each other general releases of all actions, cause or causes of action, suits, disputes, controversies, trespasses, debts, duties, damages, accounts, reckonings, and demands whatsoever, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the aforesaid tenth day of October 1787 inclusive; of all which premises the said Richard afterwards, to wit, on the said eleventh day of March 1788, at, &c. had notice; by reason of which premises the said Richard became liable to pay to the said Edward the said sum of one hundred and eighty pounds seven shillings and nine pence, according to the form and effect of the said award, and which he the said Richard, in consequence thereof, ought to have paid to the said Edward, according to the form and effect of the said agreement, and the said promise and undertaking of the said Richard so made as aforesaid: Yet the said Richard, not regarding the said agreement, nor his said promise and undertaking so by him in this behalf made, but contriving, &c. hath not yet paid to the said Edward, at his aforesaid house, or in any other manner, the said sum of money, or any part thereof, in the said award mentioned, although the said twentieth day of March 1788 is long since past, and although he the said Richard, upon the twentieth day of March 1788, and afterwards, to wit, on the first day of June 1788, at, &c. was thereunto requested by the said Edward; but to pay the same, or any part thereof, to the said Edward, he the said Richard hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said agreement, and the said promise and undertaking of the said Richard so made as aforesaid. *And whereas* also the said Edward, before and at the time of the making of the said agreement hereinafter mentioned, and continually from thenceforth hitherto hath been, and still is, seised in his demesne as of fee, of and in the barns, lands, and tenements in the said agreement hereinafter mentioned, with the appurtenances; and being so seised thereof, to wit, on the fifth day of June 1788, at, &c. it was agreed by and between the said Edward and the said Richard in manner and form following, that is to say, that the said Edward should let, and the said Richard should take and rent all that farm called Liquid, and also that farm called Ragnell, (woods, borders, and trees excepted,) for the term of eleven years from Michaelmas then next, the rent to be at and after the rate of sixteen shillings per acre, tithe included, and that the said Richard, as tenant, should pay all taxes, (land taxes excepted,) and that he should keep the said premises in good repair, the said Edward, as landlord, finding materials, and the said Richard, as tenant, workmanship; and that no hedge should be cut under ten or above

2d Count. Special assumpsit, landlord against tenant, under a very special demise, on plain paper, for not paying rent, and not repairing.

twelve years old, to be done in an huſbandlike manner, and that the hedges ſhould be preſerved from cattle and other damages, and that the ſaid Richard ſhould leave the ſame grounds or fields in graſs as were then, and part to be winter ploughed in the fourteen acres as were at the time of making the ſaid agreement, and that the crops ſhould be valued by two perſons on the ſecond of June in the laſt year of the ſaid eleven years, and that the landlord or ſucceedor ſhould take the graſs at the appraiſed value, and the money to be paid on demand: and it was then and there agreed, that the ſaid grounds ſhould be manured the preceding Chriſtmas, and the old clover to be entered immediately after appraiſement: and it was then and there further agreed, that the landlord or ſucceedor ſhould ſow the graſs ſeeds the laſt year of the ſaid term of eleven years, on what grounds, and with what ſeeds, he ſhould think proper, and pay for the ſeed; and that the grounds next to the meadow at Ragnell ſhould be left the laſt year of the ſaid term, and the commons, for the landlord or his ſucceedor, at May Day, and the ſaid Ragnell meadow and clover grounds by Poutins to be left at Midſummer; and that the ſaid Richard, as tenant, ſhould keep the premiſes in good repair, and that the landlord ſhould find materials, and the ſaid Richard workmanſhip; and that the landlord or ſucceedor ſhould enter upon the commons and the Ragnell ground next to the meadow on May Day, and that the ſtraw, dung, and compoſt ſhould be ſpent on the premiſes, and ſhould be left the two laſt years in the farm yard; and that the ſaid rent of the ſaid premiſes ſhould be paid half yearly, viz. at Lady Day and Michaelmas, and in default of which the landlord ſhould re-enter the premiſes, as if no contract as aforeſaid had been made; and that the landlord ſhould have free ingreſs, egreſs, and regreſs with his people, horſes, waggons, and carts, at all ſeaſonable times, and that the landlord or ſucceedor ſhould have part of the houſe, viz. the parlour and the rooms over, and the ſtable, at May Day before the expiration of the term aforeſaid; and that the ſaid Richard ſhould quit the whole premiſes on the Midſummer after the expiration of the aforeſaid term: and it was then and there further agreed, that when the barns or ſtables and cart-houſe, part of the ſaid premiſes, ſhould want new thatching entirely, that the landlord ſhould find workmanſhip and all materials, excepting wheat ſtraw, which the ſaid Richard, as tenant ſhould find. And the ſaid laſt mentioned agreement being ſo made as aforeſaid, afterwards, to wit, &c. (ſtate mutual promiſes); and the ſaid Edward in fact ſays, that the ſaid Richard afterwards, and after the making the ſaid agreement, in purſuance thereof, to wit, on the eleventh day of October in the year laſt aforeſaid, entered upon the ſaid premiſes in the ſaid laſt mentioned agreement mentioned, and then and there became and was poſſeſſed thereof, and hath continued to hold and enjoy the laſt aforeſaid premiſes from the ſaid eleventh day of October 1784, hitherto, to wit, at Reading aforeſaid, in the county aforeſaid. And although the ſaid Edward always,

and

and from the time of making his said promise and undertaking so by him made as aforesaid, hitherto hath well and duly performed and fulfilled the said beforementioned agreement in all things therein contained on his part and behalf to be observed, performed, and fulfilled, the said Edward in fact further says, that a large sum of money, to wit, three hundred pounds, of, &c. of the rent aforesaid, at and after the rate last aforesaid accrued, and became due from the said Richard to the said Edward, for and in respect of the said premises so held and occupied by him as last aforesaid, at and upon Michaelmas Day now last past, which the said Richard ought to have paid to the said Edward, according to the form and effect of the said agreement, and his said promise and undertaking so by him made as last aforesaid, to wit, at, &c. whereof the said Richard afterwards, to wit, on the first day of November 1788, there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. hath not paid or caused to be paid to the said Edward the rent aforesaid, so accrued due as aforesaid, or any part thereof, although often requested so to do; but to pay the same, or any part thereof, to the said Edward, he the said Richard hath hitherto wholly refused, and still doth refuse, contrary, &c. And the said Edward further says, that the said Richard, further disregarding his said agreement and his promise and undertaking in that behalf, made as last aforesaid, and further contriving, &c. hath not at any time since he became possessed of the aforesaid premises, maintained and kept, and caused to be maintained and kept the hedges and fences of and belonging to the aforesaid premises in repair, nor preserved the same from cattle and other damages; but on the contrary thereof hath wholly omitted so to do, and hath suffered and permitted the said hedges and fences, and all and every of them, to become ruinous, prostrate, and in great decay for want of sufficient and necessary repairs thereof, by means whereof divers cattle, to wit, horses, &c. entered and came in and upon the said hedges and fences of and belonging to the said premises, and eat up, damaged, killed, and destroyed, and consumed the said hedges and fences, contrary, &c. to wit, at, &c. (Add counts for use and occupation, and *quantum meruit*). And whereas also the said Richard afterwards, to wit, on, &c. at, &c. was indebted to the said Edward in another large sum of money, to wit, in the further sum of five hundred pounds, of, &c. upon and by virtue of a certain other award or umpirage made by the said Samuel Ballard upon, &c. by virtue of a certain other submission before that time made and entered into by the said Edward and the said Richard to the award, order, and determination of the said T. Spanswich and T. Bacon, of and concerning all matters in difference then depending between the said Edward and the said Richard, being other matters in difference, and thereby empowering the said Thomas Spanswich and Thomas Bacon, in case they should not agree in making such last mentioned award, to appoint a third person to award, determine, and finally settle the said matters; and whereupon the said T. S. and T. B. not agreeing in making

(r) General *indebitatus assumpsit* for money awarded by an umpire after a parol submission to arbitrators, with power to nominate such umpire in case of their not agreeing, &c.

making the ſaid award, and by virtue of the aforeſaid power, and by and with the conſent and approbation of the ſaid Edward and the ſaid Richard, nominated and appointed the ſaid Samuel Ballard as an umpire to arbitrate, award, order, and finally determine of and concerning all matters in difference between the ſaid Edward and the ſaid Richard. And being ſo indebted, aſſumpſit accordingly. (Money lent; money had and received; account ſtated.)

FOSTER BOWER.

(a) It is very doubtful whether this count could be ſupported if demurred to, but ſaid it was uſual to add it. I never ſtruck out the count, becauſe it could be of no uſe; for being in aſſumpſit, and the award under ſeal, *the award would not ſupport* the declaration in evidence, if no previous objection was taken to it. Sed Quære? See Dodd and Herbert, Sti. 459.

I think the plaintiff, upon proving the ſeveral matters contained in the declaration, may recover either on the 1ſt count on the agreement to ſubmit to arbitration, or on the ſecond upon the original agreement for the leaſe of the premiſes; or he may recover ſo much of his demand as relates to rent on the count for uſe and occupation. I apprehend no objection can be taken for want of the date upon the ſubmiſſion, ſo that the ſubmiſſion is proved to have been actually entered into. The reference to the umpire muſt be ſtamped; but I do not think the original agreement between Mr. Seymour and his tenant needs ſtamping *. The award is not objectionable for being made upon a higher ſtamp than the law requires; nor do I ſee any objection which affects the preſent queſtion. I approve likewiſe of the form of the declaration.

* On looking into the ſtamp act of 23. Geo. 3. I find it takes place from the firſt of Auguſt 1783, inſtead of 1784, (as upon memory only I had conceived,) and the original agreement muſt therefore be ſtamped as well as the reference.

FOSTER BOWER.

ON WAGERS.

On a wager, whether A. had become bail for B. in a cauſe then pending in the marſhalſea court.

1780. The Court of the King's Palace at Weſtminſter.

April 7*th*. BROOME *againſt* BARKER.

ROBERT BROOME, by Richard Kelſall his attorney, complains againſt Robert Barker, of a plea of treſpaſs on the caſe, for that whereas on the firſt day of July, in the year of Our Lord 1779, at Southwark in the county of Surrey, and within the juriſdiction of this court, a certain diſcourſe was moved and had by and between the ſaid Robert Broome and the ſaid Robert Barker, of and concerning a certain cauſe or ſuit then depending in the ſaid court of our lord the now king of his palace of Weſtminſter aforeſaid, between the ſaid Robert Broome, plaintiff, and one Humphrey Moore, defendant, in a certain plea of treſpaſs on the caſe to the damage of the ſaid Robert Broome of ninety-nine ſhillings, and upon that diſcourſe a queſtion then and there aroſe and was debated between the ſaid Robert Broome and the ſaid Robert Barker, whether the ſaid Robert Barker had ever become bail for the ſaid Humphrey Moore in the ſaid plea or ſuit or not; and the ſaid Robert

Robert Broome then and there asserted and affirmed that the said Robert Barker had become bail for the said Humphrey in the said plea or suit, and which said assertion and affirmation of the said Robert Broome he the said Robert Barker then and there wholly denied and asserted to the contrary thereof; and thereupon afterwards, to wit, on the same day and year aforesaid, at Southwark aforesaid, in the county and jurisdiction aforesaid, in consideration that the said Robert Broome, at the special instance and request of the said Robert Barker, had then and there paid to the said Robert Barker the sum of five pounds of lawful money of Great Britain, he the said Robert Barker undertook, and to the said Robert Broome then and there faithfully promised to pay to him the said Robert Broome the sum of ten pounds of like lawful money, in case he the said Robert Barker had ever become bail for the said Humphrey Moore in the said plea or suit. And the said Robert Broome in fact says, that the said Robert Barker before the making of the promise and undertaking aforesaid, to wit, on the fourth day of October, in the year of Our Lord 1778, had become bail in the said Palace Court for the said Humphrey Moore, to wit, in the said Palace Court then held at Southwark aforesaid, in the county and jurisdiction aforesaid, whereof the said Robert Barker, afterwards, to wit, on the same first day of July, A. D. 1779, at Southwark aforesaid, in the county and jurisdiction aforesaid, had notice; by reason whereof the said Robert Barker became liable to pay, and ought to pay to the said Robert Broome the said sum of ten pounds, whereof the said Robert Barker then and there had notice; yet the said Robert Barker, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Robert Broome in this behalf, although often requested, hath not yet paid to the said Robert Broome the said sum of ten pounds, or any part thereof, but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said Robert Broome of twenty pounds; and therefore he brings his suit, &c. And also the said Robert Broome avers, that neither he nor the said Robert Barker, nor either of them at the time of levying of the plaint of the said Robert Broome here in court, were nor now are of the king's household. Averment.

And the said Robert Barker, by Richard Heighway, his attorney, comes and defends the wrong and injury when, &c. and says, that true it is that such discourse was moved and had by and between the said Robert Broome and the said Robert Barker, as the said Robert Broome hath above alledged, and that the said Robert Barker did promise and undertake in manner and form as the said Robert Broome hath above in and by his said declaration alledged against him; but the said Robert Barker further saith, that he the said Robert Broome ought not to have or maintain his aforesaid action thereof against him, because he saith, that he the said Robert Barker had not at any time before the making of the said promise and undertaking of the said Robert Barker, become bail for the Plea thereto.

the said Humphrey Moore in the said plea or suit, as by the declaration is above alledged; and of this he puts himself upon the country; and the said Robert Broome doth the like: It is therefore commanded by the said Court to the bearers of the virges of the king's household, the officers and ministers of the said court, and to every of them, that they or one of them do cause to come before the judges of the said court at the court of the king's palace of Westminster aforesaid, on Friday the fourteenth day of April next following, to be held here, to wit, at Southwark aforesaid, in the said county of Surrey, within the jurisdiction aforesaid, twelve free and lawful men of the neighbourhood of Southwark aforesaid, in the said county of Surrey, within the jurisdiction of the court aforesaid, by whom the truth of the matter may be the better known, and who are in no wise akin either to the said Robert Broome or to the said Robert Barker, to make a certain jury between the said Robert Broome and the said Robert Barker, concerning the plea aforesaid, because as well the said Robert Barker as the said Robert Broome, between whom the contention thereupon is, have put themselves upon the said jury, the same day is given by the court here to the parties aforesaid here, &c. At which day, to wit, at the court of the king's palace of Westminster, lastly above mentioned, holden before the Judges of the said court here, to wit, at Southwark aforesaid, in the said county of Surrey, within the jurisdiction of the said court, on the said Friday, the fourteenth day of April, in the twentieth year of the reign of our lord the now king, comes as well the said Robert Broome as the said Robert Barker, by their aforesaid attornies; and the jurors of the jury beforementioned, to wit, William Richardson, &c. being called likewise come; who being chosen, tried, and sworn to speak the truth concerning the premises, say, upon their oath, that the said Robert Barker had not, at any time before the making of the aforesaid promise and undertaking of the said Robert Barker, become bail for the said Humphrey Moore in the said plea or suit mentioned in the aforesaid declaration of the said Robert Broome, as by the said declaration is above alledged. V. LAWES.

Venire.

Verdict.

Declaration by the *survivor* of two against the *administrator* of the other in assumpsit, upon a wager of 1000l. who should live the longer; and Opinions there-

YORKSHIRE, to wit. Sir John Ramsden, bart. complains of Thomas Townley Parker, esquire, administrator of all and singular the goods and chattels, rights and credits, which were of Banastre Parker, esquire, deceased, at the time of his death, who died intestate, being in the custody of the marshal of the marshalsea of our sovereign lord the present king, before the king himself; for that whereas on the twenty-first day of August, A. D. 1782, at Tadcaster, in the said county of York, in consideration that the said Sir John, at the special instance and request of the said Banastre, had then and there undertaken, and faithfully promised the said Banastre, to pay to the said B. the sum of 1000l. of lawful money of Great Britain, if he the said B. should outlive the said Sir John, he the said B. undertook, and to the said Sir John then and there faithfully promised, to pay to him the sum of one thousand pounds of like lawful money, if he the said Sir John should outlive the

the said B.; and the said Sir John in fact says, that the said B afterwards, to wit, on the first day of January, A. D. 1789, at T. aforesaid, died, and the said Sir John then and there survived the said B.: nevertheless, the said Thomas Townley, administrator as aforesaid, not regarding the said promise and undertaking of the said B. so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sir John in this behalf, hath not (although often requested) paid to the said Sir John the said sum of one thousand pounds, or any part thereof, neither was the same paid to the said Sir John by the said B. in his life-time, but to pay the same to the said Sir John the said Thomas Townley hath hitherto altogether refused, and still doth refuse, and the same still remains wholly unpaid to the said Sir John. And whereas also, on the said twenty-first day of August, in the said year of Our Lord 1782 aforesaid, at T. aforesaid, in consideration that the said Sir John, at the like instance and request of the said B. had then and there undertaken, and faithfully promised the said B. that the executors or administrators of the said Sir John would pay to the said B. the sum of one thousand pounds of like lawful money, if the said B. should outlive the said Sir John, he the said B. undertook, and to the said Sir John then and there faithfully promised, that the executors or administrators of the said B. should pay to the said Sir John the sum of one thousand pounds of like lawful money, if he the said Sir John should outlive the said B.; and the said Sir John in fact says, that the said B. afterwards, to wit, on the first day of January, A. D. 1789, at T. aforesaid, died, and the said Sir John then and there survived him the said B.: nevertheless the said T. T. executor as aforesaid, not regarding the said promise and undertaking of the said B. so made by him as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sir John in this behalf, hath not (although often requested) paid to the said Sir John the said sum of one thousand pounds, or any part thereof, but to pay the same to the said Sir John the said T. T. hath hitherto altogether refused, and the same still remains wholly unpaid to the said Sir John, to the damage of the said Sir John of 2000l.; and therefore he brings suit, &c. A. CHAMBRE.

2d count, On a promise that the *executors, &c.* of the person dying first should pay to the survivor.

Mr. Banastre Parker having died intestate, his personal estate alone is liable to payment of his simple contract debts, and his *simple* contract creditors cannot have the benefit of his personal estate, except by a suit in equity for marshalling his assets, as the administrator may plead the debts by bond and covenant, and that he has not assets beyond those debts, to any action by a simple contract creditor, and consequently *may defeat* the demand of Sir John Ramsden at law, supposing him to have a legal demand. Whether he has a legal demand or not I think must depend upon the construction to be given to the statute of 14. Geo. 3. c. 18.; for independent of that statute, I think it impossible (considering the decisions on wagers) to hold this an unlawful wager. In Foster and Thackeray, cited 1. Term Rep. 57. note 6 a wager on an event in which the parties had no interest was considered as within the statute by the Judges of the Courts of King's Bench and Common Pleas, though the Barons of the Exchequer differed in opinion. In Atherfold and Beard, 2. Term Rep. 610. Buller J. thought with the Judges of the King's Bench and Common Pleas in Foster and Thackeray: he admitted, that the statute spoke only of policies, but thought it might extend to the case of a wager.

wager. I do not know that the point has ever been decided. I think, confidering the words of the 14. Geo. 3. it will be difficult to bring this cafe within it: the words are, "that no infurance fhall be "made," and the common conftruction of the word Infurance is an agreement, in confideration of a fum paid, to pay a larger fum on a future event, which I think it will be difficult to apply to a mere wager. The contract between Sir John R. and Mr Parker was merely, that the reprefentatives of whichever fhould die firft fhould pay the furvivor a certain fum. There appears to me to be nothing illegal in fuch contract, independent of the ftatute. Indeed, the policy of the act appears to me in no degree to apply to the cafe of a fimple wager. I therefore apprehend Sir John R. muft have a verdict and judgment for his demand againft the goods of the late Mr. P. though he can have no fruit of his judgment at law. *If Mr. P. is defirous that this demand fhould not prejudice other fimple creditors,* he fhould give them notice of it, and any of the creditors may file a bill on behalf of himfelf and the other creditors againft Mr. P. for an account and adminiftration of the perfonal eftate, and to have the affets marfhalled, and that the fimple contract may ftand in the place of the fpecialty creditors on the real eftate, to the extent of the perfonal eftate exhaufted in payment of fpecialty debts.

Mr. P. may put in an amicable anfwer, and the cafe may be heard by confent before Sir J. R. can have judgment, and then Mr. P. may, by a bill againft him, reftrain his future proceedings, and compel him to come in with the other fimple contract creditors under the decree.

If Sir John Ramfden *can obtain judgment* before a decree for adminiftration of the affets is obtained, he muft be preferred in the adminiftration before the other fimple contract creditors.

JOHN MITFORD.

N. B. Mr. Chambre's and Mr. Heywood's Opinions on the part of the plaintiff, and Mr. Lawes' and Mr. Topping's Opinions on the part of the defendant, were taken on this cafe, and they all agreed, that the wager was recoverable at law.

Pleas thereto: 1ft, *Non affumpfit* by teftator. 2d, *Plene adminiftravit* by adminiftrator. 3d, *Plene adminiftravit præter* feveral bond debts to defendant's felf and others, and alfo feveral debts due to defendant on fimple contract, and 5l. affets, which is infufficient to fatisfy them.

And the faid Thomas Townley, adminiftrator as aforefaid, by James Hodgfon his attorney, comes and defends the wrong and injury when, &c. and fays that the faid Banaftre Parker, deceafed, in his lifetime, did not undertake and promife in manner and form as the faid Sir John hath above thereof complained againft him the faid Thomas Townley, and of this he puts himfelf upon the country, &c. And for further plea in this behalf the faid T. T. by leave of the Court here to him for this purpofe firft granted according to the form of the ftatute in fuch cafe made and provided, fays that the faid Sir John ought not to have or maintain his aforefaid action thereof againft him, becaufe he fays that he the faid T. T. has fully adminiftered all and fingular the goods and chattels which were of the faid Banaftre Parker now deceafed, at the time of his death, which have ever come to or been in his hands to be adminiftered, to wit, at Tadcafter aforefaid, in the county aforefaid; and that he the faid T. T. hath not, nor at the time of exhibiting the bill of the faid Sir John, or at any time fince, had any goods or chattels which were the goods or chattels of the faid Banaftre Parker deceafed, at the time of his death, in the hands of him the faid T. T. to be adminiftered, and this the faid Thomas T. is ready to verify; wherefore he prays judgment if the faid Sir John ought to have or maintain his aforefaid action thereof againft him, &c. And for further plea in this behalf the faid T. T. by like leave of the Court here to him for this purpofe firft granted according to the form of the ftatute in fuch cafe made and provided, fays that the faid Sir John ought not to have or maintain his aforefaid action thereof againft him the faid T. T. becaufe

because he says that the said Banastre Parker deceased, in his life-time, to wit, on the twenty-ninth day of September, in the year of Our Lord 1785, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain writing obligatory, bearing date the day and year aforesaid, sealed with his seal, and as his deed delivered for a just and true debt, became held and firmly bound to one John Nabb and J. S. Aspden in the sum of one thousand six hundred pounds of lawful money of Great Britain, to be paid to the said John Nabb and Joseph Seton Aspden, when he the said Banastre Parker deceased should be thereunto afterwards requested, which said writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and also that the said B. Parker deceased, in his lifetime, to wit, on the tenth day of April, in the year of Our Lord 1782, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered as another just and true debt, became held and firmly bound to one Ann Alker and one Jennet Alker in the sum of eight hundred pounds of lawful money of Great Britain, to be paid to the said Ann Alker and Jennet Alker when he the said Banastre Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and also that the said B. Parker deceased, in his lifetime, to wit, on the sixth day of August, in the year of Our Lord 1785, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Mrs. Lea in the sum of four hundred pounds of like lawful money, to be paid to the said Mrs. Lea when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and also that the said B. Parker deceased, in his lifetime, to wit, on the tenth day of April, in the year of Our Lord 1782, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Francis Plumbe in the sum of seven hundred pounds, to be paid to the said Francis Plumbe, when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and also that the said B. Parker deceased, in his life-time, to wit, on the twenty-fourth day of October, in the year of Our Lord 1786, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year

last

last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Margaret Townley in the sum of six hundred pounds of like lawful money, to be paid to the said Margaret Townley when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and the said Thomas Townley further says, that the said B. Parker deceased, in his life-time, to wit, on the eighteenth day of January, in the year of Our Lord 1788, to wit, at Tadcaster aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to the said Margaret Townley in the sum of five hundred pounds of like lawful money, to be paid to the said Margaret Townley when he the said B. Parker deceased should be thereto afterwards requested, and which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncancelled; and the said T. T. further says, that the said Banastre Parker deceased, in his life-time, and at the time of his death, to wit, at Tadcaster aforesaid, in the county aforesaid, was justly and truly indebted to the said T. T. in the further sum of two hundred pounds, of like lawful money, for money by the said T. T. before that time lent and advanced to, and paid, laid out and expended for the said B. Parker deceased, and at his special instance and request, and for money by the said B. Parker deceased before that time had and received to and for the use of the said T. T. and for money due from the said B. Parker deceased to the said T. T. upon divers accounts before that time had and stated by and between the said B. Parker deceased and the said T. T. And the said T. T. further saith, that the said B. Parker deceased, afterwards, to wit, on the seventh day of February, in the year of Our Lord 1788, to wit, at Tadcaster aforesaid, in the county aforesaid, died so indebted to him the said T. T. intestate, after whose death, to wit, on the twenty-third day of December, in the said year of Our Lord 1788, administration of all and singular the goods, chattels, and credits, which were of the said Banastre Parker deceased, at the time of his death, by John Briggs, clerk, master of arts, vicar general and official principal of the right reverend father in God, William, by divine permission Lord Bishop of Chester, to whom the granting of that administration of right belonged, was in due manner committed to the said T. T. to wit, at Tadcaster aforesaid, (and which said letters of administration the said Thomas T. now brings here into court, bearing date the day and year last above mentioned), by means whereof the said T. T. became, and was, and still is, administrator of all and singular the goods and chattels, rights and credits, which were of the said Banastre Parker at the time of his death, to wit, at Tadcaster aforesaid: and the said Thomas T. further says, that he has fully administered all and singular

Profert of the letters of administration.

ſingular the goods and chattels which were of the ſaid B. Parker deceaſed, at the time of his death, in his hands to be adminiſtered, except goods and chattels to the value of five pounds, to wit, at Tadcaſter aforeſaid, in the county aforeſaid; and that he the ſaid T. T. had not at the time of the commencement of this ſuit, or at any time ſince, nor now hath, any goods or chattels which were of the ſaid B. Parker deceaſed, at the time of his death, in the hands of him the ſaid T. T. to be adminiſtered except goods and chattels to the value of five pounds, which are not ſufficient to pay or ſatisfy the money due and owing upon and by virtue of the ſaid writings obligatory herein-before-mentioned, and the aforeſaid debt ſo due to him the ſaid T. T. as aforeſaid, and which are ſubject and liable to the ſatisfaction and payment thereof; and this he the ſaid T. T. is ready to verify; wherefore he prays judgment if the ſaid Sir John ought to have or maintain his aforeſaid action againſt him, &c. JAMES TOPPING.

I Think this bond ſhould be ſtated as (upon the face of it it purports to be) a bond to the perſons named in it, as obligees, and that the aſſets of it to the defendant need not be ſhewn; becauſe being a choſe in action, it could not be aſſigned at law, the aſſets only veſting in the aſſignee a power to ſue in the name of the obligee, if neceſſary to bring an action at law for the recovery of it. T. B.

I Have not a copy of the bonds hereafter mentioned, muſt therefore trouble Mr. Hodgſon to ſupply the blanks throughout. T B.

N. B. The blanks for the ſums muſt be ſupplied, with the *penalties* of the bonds. Obſerve this throughout.

T. B.

I Have gone through all the long papers laid before me, as inſtructions for plea in this cauſe, with great attention, and have drawn the above, which I think quite ſufficient to defeat the preſent action. I have pleaded only ſuch bonds as are ſpecified in the caſe, (though others are referred to generally) becauſe I think their amount more than ſufficient for the purpoſe of this plea. Care ſhould be taken to inſert the dates and ſums in the bonds truly, and the latter ſhould be in the penalties, and not the ſums mentioned in the conditions. It is ſometimes uſual in caſes like this to ſet out the bonds and conditions and ſtate how much is really due upon both: but as I conceive that is only abſolutely neceſſary when the day of payment is yet to come, and it is long paſt in all the above, and it tends both to brevity and ſafety to ſtate the bonds only without the conditions, I have done ſo here. T. BARROW.

I Have peruſed and approve of theſe pleas, as properly drawn in point of form, when the blanks are filled up. I take it for granted the bonds are or will be truly deſcribed, and that the aſſets are much more than covered by theſe bonds and the adminiſtrator's own debt, for I have nothing before me but the draft of the pleas themſelves.

EDWARD LAW.

General *indebitatus aſſumpſit* by winner againſt loſer at a *game* called pitch halfpenny for 9l. 19s. 6d. the *original* ſum loſt being 16l. and upwards.

YORKSHIRE, to wit. Thomas Richardſon complains of A. Hudſon, being, &c. in a plea of treſpaſs on the caſe, &c.; for that whereas heretofore, to wit, on the firſt day of January, A. D. 1787, at Leeds, in the county of Y. in conſideration that the ſaid T. R. at the ſpecial inſtance and requeſt of the ſaid A. H. had then and there agreed and undertaken, and faithfully promiſed the ſaid A. H. to play at a certain game (that is to ſay, a certain game called pitch halfpenny) with him the ſaid A. H. and to pay him all ſuch ſum or ſums of money as he the ſaid T. R. ſhould loſe to the ſaid A. H. by means of his ſo playing with him the ſaid A. H.

when

when he the said T. R. should be thereunto afterwards requested, he the said A. H. then and there, to wit, on the day and year aforesaid, at L. aforesaid, in the county aforesaid, agreed and undertook, and faithfully promised the said T. R. to play at the said game with him the said T. R. and to pay him the said T. R, all such sum and sums of money as he the said A. H. should lose to the said T. R. by means of his so playing with him the said T. R. when he the said A. H. should be thereunto afterwards requested; and the said T. R. avers that he, confiding in the said promise and undertaking of the said A. H. so by him made as aforesaid, did afterwards, to wit, on the day and year aforesaid, at Leeds aforesaid, in the county aforesaid, play at the said game with him the said A. H. who did also then and there play at the said game with him the said T. R.; and although the said A. H. by means of his so playing at the said game with the said T R. as aforesaid, did then and there lose to him the said T. R. who did then and there win of him the said A. H. divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of nine pounds nineteen shillings and sixpence, of lawful money of Great Britain (whereof part was then and there paid to the said T. R.); and although the said A. H. was then and there requested by the said T, R. to pay him the said sum of money so by him lost to the said T. R. in manner aforesaid, yet the said A. H. not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said T. R. in this behalf, did not, nor would at the time when he was so requested as aforesaid, pay, nor hath he at any time since hitherto paid, the said sum of nine pounds nineteen shillings and sixpence so by him lost to the said T. R. as aforesaid, or any part thereof, to the said T. R. but he to pay the same, or any part thereof, to the said T. R. hath hitherto wholly refused, and still refuses, so to do, to wit, at L. aforesaid, in the county aforesaid. (2d count for money had and received; account stated; and common conclusion thereto.)

It may be proper to suggest, that in searching the books I can find no case which says that where the whole sum lost at one sitting amounts to 10l. or upwards, and must be so proved in evidence, the plaintiff can declare for and recover a less sum than 10l. under such evidence, and thereby evade the statute of 9. Ann. c. 14 s. 2. (upon which the action must be founded); but considering that the statute is an infringement upon the rule of common law; that it is a penal law, and not merely remedial, as by Ch. J. Willes, in the case of Lynal against Longbottom, 2. Wils. 36. and that a recovery in an action for a sum under 10l. would be pleadable in bar to another action for the same wager or stake; I am not decisively of opinion that this action is not maintainable. T. Barrow.

2. Stra. 1079. 1249. 1. Salk. 100. 3. Salk. 14. 175. S. C. 6. Mod, 128. 2. Ld. Raym. 1034. Holt, 329. 5. Mod, 13. 1. Lutw. 180. 2. Wils. 36. 67. 309. 1. Wils. 220.

Assumpsit on a *wager* of five guineas, that one S. T. had before a certain time bought a waggon, and one shilling deposited.

KENT, to wit. Isaac Good complains of James Elliott, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself; for that whereas, on the twenty-first of June, in the year of Our Lord 1787, at Maidstone,

Maidstone, in the said county of Kent, a certain discourse was had and moved between the said Isaac and the said James of and concerning a certain waggon, then lately belonging to one David Coleman, and upon that discourse a certain question then and there arose, and was debated between the said Isaac and the said James, whether one Susannah Tye had or had not before that time bought the said waggon; and upon that discourse the said James then and there asserted and affirmed, that the said Susannah Tye had bought the said waggon, which said assertion and affirmation of the said James, the said Isaac then and there wholly denied to be true; and thereupon the said James then and there betted the said Isaac the sum of five guineas of lawful money of Great Britain, against the money so betted by the said Isaac, as next hereafter-mentioned, that the said Susannah Tye had before that time bought the said waggon; and the said Isaac then and there betted the said James the sum of five guineas against the money so betted by the said James as aforesaid, that the said Susannah Tye had not before that time bought the said waggon; and it was then and there agreed between them, that the said bet should be decided and determined by the said David Coleman and the said Susannah Tye; and thereupon the said Isaac and James then and there deposited each of them the sum of one shilling of like lawful money, in part of the said several respective sums of money so betted as aforesaid, in the hands of one Elizabeth Heath, to be paid by her to the said Isaac, in case the said David and Susannah should say and determine that the said Susannah had not before that time bought the said waggon, and to the said James, in case the said David and Susannah should say and determine that the said Susannah had before that time bought the said waggon: and thereupon in consideration of the premises, and also in consideration that the said Isaac, at the special instance and request of the said James, had then and there agreed with the said James, that the said Elizabeth should and might pay the said money so deposited in her hands as aforesaid to the said James, and also undertook, and faithfully promised the said James, to pay to him the said James the further sum of five pounds four shillings of like lawful money, the residue of the said sum of five guineas so betted by him the said Isaac as aforesaid, in case the said David and Susannah should say and determine that the said Susannah Tye had before that time bought the said waggon, the said James then and there agreed with the said Isaac, that the said Elizabeth Heath should and might pay the said money so deposited in her hands as aforesaid to the said Isaac; and also undertook, and to the said Isaac then and there faithfully promised, to pay to the said Isaac the like sum of five pounds four shillings of like lawful money, the residue of the said sum of five guineas, so betted by him the said James as aforesaid, in case the said David and Susannah should say and determine that the said Susannah had not before that time bought the said waggon: and the said Isaac avers, that the said Susannah had not before that time bought the said waggon, and that afterwards, to wit, on the twenty-first day of June, in the said year of Our Lord 1787, at Maidstone aforesaid, the said David and Susannah did say and

Mutual promises.

and determine that the said Susannah had not before the time of the making the said last mentioned promise and undertaking of the said James bought the said waggon, whereof the said James afterwards, to wit, on the same day and year last aforesaid, at Maidstone aforesaid, had notice; whereby the said Isaac became intitled to the said money so deposited in the hands of the said Elizabeth Heath as aforesaid, and the said James became liable to pay, and ought to have paid, to the said Isaac the sum of five pounds four shillings so by the said James promised to be paid to him the said Isaac as aforesaid. [2d count same as the first, only saying nothing of the reference. 3d count same as the first, only saying nothing of the deposit, and confining it to the determination of the referees. 4th count same as first, only without either reference or deposit.] Yet the said James, not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said Isaac in this behalf, hath not (although often requested) paid to the said Isaac the said several sums of money so by the said James promised to be paid by him to the said Isaac as aforesaid, or any of them, or any part thereof, but to pay the same, or any of them, or any part thereof, to the said Isaac, hath hitherto altogether refused, and still doth refuse, to the damage, &c. T. Barrow.

Declaration on a wager on a cock-match.

LANCASHIRE, to wit. W. B. complains against H. B. being, &c. for that whereas, on the twenty-seventh of June 1759, at Lancaster, in the said county, a cock-match was fought between two certain cocks, at which the said W. and H. were then and there present; and that while the said match remained undecided, and during the fighting of the same, to wit, on the same day and year aforesaid, at L. aforesaid, a certain cock, one of the said cocks, was then and there in a likely way of winning the said match; and thereupon, in consideration that the said W. had then and there, at the special instance and request of the said H. undertaken and faithfully promised the said H. to pay him the sum of five shillings, in case the said cock which was in a likely way of winning the said match should win the said match, he the said H. then and there undertook, and to the said W. faithfully promised, to pay to him the sum of ten pounds, in case the said cock which was so then and there in a likely way of winning the said match should lose the said match: and the said William in fact says, that afterwards, to wit, on the same day and year aforesaid, at Lancaster aforesaid, the said match was decided, and the said cock which was so in a likely way of winning the said match as aforesaid then and there lost the said match, whereof the said H. afterwards, to wit, on the same day and year aforesaid, there had notice, by reason whereof the said H. according to his said promise and undertaking, became liable to pay, and ought to have paid, to the said W. the sum of 10l. to wit, at L. aforesaid. [2d count, money had and received. Breach.]

I Am afraid this case falls within the words "other game or games," in the statute of 9. Anne, ch. 14. Cock-fighting is expresly mentioned in the statute of King Charles against Gaming, and so is horse-racing; but neither of these

these is mentioned in 9. Anne; yet in the case of Goodburn and Martin, 2. Stra. 1159. the Court held horse-racing to be within the words "other game or "games" in the latter statute, as it was particularly mentioned in the 10. Car.; and cock-fighting must therefore be within it for the same reason.

J. WALLACE.

MIDDLESEX, to wit. George Neale complains of John Bolton, being, &c. for that whereas the said J. B. on the twelfth April 1774, at Westminster, in the said county of M. in consideration that the said G. N. at the special instance and request of the said J. B. had then and there undertaken, and faithfully promised the said J. to pay him the sum of two hundred guineas of lawful, &c. in case a certain horse called Trentham should not be ready to run a match with a certain other horse called Minister, on the (a) *twenty-fifth of April* then next ensuing, on Newmarket Heath, in the county of Cambridge, or should not run the said match with the said horse called Minister, and win the same, if the said horse called Minister should be ready to run the said match with the said horse called Trentham; or in case a certain other horse called Pumpkin should not be ready to run a match with a certain other horse called Mambrino on the thirtieth of April then next ensuing, on Newmarket Heath, or should not run the said match with the said horse called Mambrino, and win the same, if the said horse called Mambrino should be ready to run, and should run, the said match with the said horse called Pumpkin, undertook, and then and there faithfully promised, that in case both the said horses called Pumpkin and Trentham should be ready to run the said respective matches aforesaid, then if neither of the said horses called Minister and Mambrino should be ready to run the same, (b) *or if both or either of them should be ready to run, and should run, the said respective matches, or either of them, and neither of the same horses called Mambrino and Minister should win one of the said matches*, he the said J. B. should pay to the said G. N. the sum of four hundred guineas of like lawful money; and the said G. avers, that the said horses called Trentham and Pumpkin were ready to run the said respective matches with the said horses called Minister and Mambrino on the respective days aforesaid, on the said place called Newmarket Heath, and would have run the same, or either of them, had the said horses called Mambrino and Minister been ready to run both or either of the said matches; but the said horses called Minister and Mambrino were not, nor was either of them, then and there ready to run the said respective matches, or either of them; whereof the said John afterwards, to wit, on the tenth May, in the said year 1774, at Westminster aforesaid, had notice; and by reason of the premises he the said John became liable to pay to the said George the said sum of two hundred guineas. And whereas also the said defendant, on the said twelfth April, in the said year 1774, at, &c. aforesaid, in the said county, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there undertaken, and faithfully promised

For a *wager* on a horse-race at Newmarket.

Second count.

(a) The day on which Mr. Vernon's Minister paid forfeit to Trentham.

(b) This is omitted in the second count.

promised

promised the said defendant other two hundred guineas of like lawful money, in case a certain other horse called T. should not be ready to run a match with a certain other horse called M. on the *twenty fifth day of April* then next ensuing, on Newmarket Heath aforesaid, or should run the said match with the said last-mentioned horse called M. and win the same, if the said last mentioned horse called M. should be ready to run, *and should run, the said match with the said last-mentioned horse called T.* or in case a certain other horse called P should not be ready to run a match with a certain other horse called Mambrino on *the said thirtieth April* then next ensuing, on Newmarket Heath aforesaid, or should not run the said match with the said last-mentioned horse called Mambrino, and win the same, if the said horse called Mambrino should be ready to run, and should run, the said last-mentioned match with the said last-mentioned horse called P. undertook, and then and there faithfully promised the said plaintiff, that in case both the said last-mentioned horses called T. and P. should be ready to run the said respective matches as last aforesaid *(a) against the said two horses called M. and M. last-mentioned, as aforesaid,* he the said defendant would pay to him the said plaintiff other four hundred guineas of like lawful money; and the said plaintiff avers, that the said horses called T. and P. were ready to run *(b)* the said respective matches last aforesaid *(c) with the said last-mentioned horses called M. and M.* on the respective days last-mentioned, on the said place called Newmarket Heath, and would have run the same, or either of them, had the said last-mentioned horses called M. and M. been ready to run both or either of the *(d) said* matches; but the said last-mentioned horses called M. and M. were not, nor was either of them, then and there ready to run the said respective matches last aforesaid, or either of them; whereof the said defendant afterwards, to wit, on the tenth May, in the said year 1774, at Westminster, had notice; and by reason of the premises last aforesaid, he the said defendant became liable to pay to the said plaintiff the said sum of four hundred guineas last-mentioned. And whereas also the said defendant, on the same day and year first above mentioned, at Westminster aforesaid, in consideration that the said plaintiff, at the like special instance and request, &c. had then and there undertaken, and faithfully promised to pay him the said defendant, other two hundred guineas of like lawful money, in case a certain other horse called T. should not be ready to run a certain other match with a certain other horse called Minister, on the said twenty-fifth April then next ensuing, on Newmarket Heath aforesaid, or should not run the said last-mentioned match with the said last-mentioned horse called Minister, if the said last-mentioned horse called Minister should be ready to run the same, or in case a certain other horse called Pumpkin should not be ready to run a certain other match with a certain other horse called Mambrino, on the said

Third count.

(a) This is omitted in the third count.
(b) In the third count say *their.*
(c) In the third count omit this.
(d) In the third count say *last-mentioned.*

said thirtieth April then next ensuing, on Newmarket Heath aforesaid, or should not run the said last-mentioned match with the said last-mentioned horse called Mambrino, if the said last-mentioned horse called Mambrino should be ready to run the same, undertook, and to the said plaintiff then and there faithfully promised, to pay him other four hundred guineas of like lawful money, in case the said two last-mentioned horses called M. and M. should be ready to run their respective matches as last aforesaid, or either of them; and the said plaintiff avers (as in the second count, with the alterations). Nevertheless the said defendant, not regarding his said several promises and undertakings in manner and form aforesaid made, but contriving, &c. F. BULLER.

Breach.

The bet was made in writing thus: I take with Mr. John Bolton, this 12th April, 400 guineas to 200 guineas, that Trentham and Pumpkin both win" And underneath written, They are to run next meeting with Minister and Mambrino.

"GEO. NEALE."

Minister paid forfeit to Trentham, and Mambrino to Pumpkin.

I Apprehend, that neither of the above parties were owners of the horses intended to run, but that the bets were made on the event of a match which had been before made; in that case the bets are clearly void, by the statute against gaming; and plaintiff cannot maintain any action. F. BULLER.

I Do not comprehend how this bet could be won even if it were legal, for it is not made *play or pay*; and the memorandum at the bottom seems to import, that in order to decide the bet the horses must run. However, as the Jockey Club have determined otherwise, I must in that submit to their superior judgment. F. BULLER.

MIDDLESEX, *ss.* Stephen Hanks complains of John Atwood, being, &c. of a plea, &c. for that whereas, on the twenty-third day of May, A. D. 1774, to wit, at W. in the said county of M. a certain discourse was moved and had between the said S. and J. of and concerning a certain poney of the said S. and of and concerning the trotting of the said poney; and thereupon a certain wager or bet was then and there proposed and agreed on and laid between the said S. and the said J. to wit, of twenty-five pounds on each side, that is to say, the said S. did bet the said J. twenty-five pounds that the said poney should trot eleven miles in one successive hour on Monday the thirtieth day of May, in the said year 1774, and that the said poney should carry six stone weight, and should start from the eighth mile stone on the Hounslow road, in the said county of Middlesex, and go to the thirteenth-mile-and-a-half stone and back again to the said eighth mile stone; and the said J. did then and there bet the said S. twenty-five pounds that the said poney did not trot the space aforesaid in the time aforesaid, starting as aforesaid, and carrying the weight aforesaid; and it was thereupon then and there, to wit, on the twenty-third day of May, in the year 1774 aforesaid, at Westminster aforesaid, agreed between the said S. and the said J. that the said S. and J. should each of them make stakes good, that is to say, should deposit such respective sums of twenty-five pounds and twenty-five pounds in the hands of one William Galley before or on the twenty-eighth day of May in the said year, those two respective sums of twenty-five

Declaration in assumpsit in B.R. on an agreement to make stakes good on a wager concerning the trotting of a horse, to carry a certain weight, or forfeit eight guineas.

pounds and twenty-five pounds, to be by him the said William Galley paid to the winner, after the determination of the wager or bet; but if either of the said parties (to wit, the said J. or S.) should refuse making stakes to the said W. G. (that is to say, should refuse to deposit the sum of twenty-five pounds aforesaid in the hands of the said W. G. for the purpose aforesaid), on the said twenty-eighth day of May, that then and in such case the party so refusing should forfeit and pay to the other party the sum of eight guineas: and the said agreement being so made, he the said S. afterwards, to wit, on the said twenty-third day of May, in the year aforesaid, at W. aforesaid, at the special instance and request of the said John, undertook, and faithfully promised the said J. to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and in consideration thereof, he the said J. afterwards, to wit, on the day and year last mentioned, at W. aforesaid, undertook, and faithfully promised the said S. to perform and fulfil all things in the said agreement contained on his part and behalf to be performed and fulfilled. And the said S. avers, that although he the said S. was ready and willing to do and perform every thing in the said agreement contained on his part and behalf to be done and performed, and although he the said S. did, on the twenty-eighth day of May in the said year 1774, make stakes good to the said W. G. (to wit, by depositing in his hands the said sum of twenty-five pounds, so to be by him the said Stephen deposited for the purpose aforesaid,) according to the tenor and effect of the said agreement, and of his aforesaid promise and undertaking so by him made in this behalf as aforesaid; yet the said J. did not, on the said twenty-eighth day of May in the said year 1774, make stakes good to the said W. G. (to wit, by depositing in the hands of the said W. G. the said twenty-five pounds, so to be by him the said J. deposited in the hands of the said W. G. for the purpose aforesaid,) but therein wholly failed and made default, to wit, at Westminster aforesaid; by means of which said premises, the said J. afterwards, to wit, on the twenty-ninth day of May in the year aforesaid, at Westminster aforesaid, forfeited and became liable to pay, and ought to have paid, to the said S. the sum of eight guineas, according to the tenor and effect of the said agreement, and of his said promise and undertaking so by him made in this behalf as aforesaid, whereof the said J. afterwards, to wit, on the day and year last mentioned, at W. aforesaid, had notice. (2d Count, to deposit twenty-five pounds, and if did not make deposit good, bet to be off.) Yet the said J. not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving, &c. to deceive and defraud the said S. in this behalf, hath not as yet paid the said two several sums of eight guineas and eight guineas, or any part thereof, (although so to do he the said J. was requested by the said S. afterwards, to wit, on the day and year last mentioned, and often afterwards, to wit, at W. aforesaid,) but he to pay the same, or any part thereof, to the said S. hath hitherto wholly refused, and still refuses, so to do. Pledges, &c.

MIDDLESEX,

In B. R. for money on a wager at a horſe-race.

MIDDLESEX, ſſ. George Forbes complains of Dennis O'Kelly, being, &c. for that whereas at the time of the making the agreement hereafter next mentioned, and at the time of the making of the promiſe and undertaking of the ſaid Dennis hereafter next mentioned, a certain horſe-race was intended to be run ſoon afterwards, to wit, on, &c. then next following, by and between certain horſes, that is to ſay, by and between a certain horſe called by the name of, &c. (and which ſaid horſe then was, or was then reputed to be the property of, and belonging to, &c.) and a certain other horſe commonly called by the name of, &c. (and which ſaid laſt mentioned horſe then was, or was then reputed to be the property of, and to belong to, the ſaid Dennis) and a certain other horſe called by the name of Quill, (and which ſaid laſt mentioned horſe then was, or was then reputed to be the property of, and to belong to, a certain perſon commonly called Lord Abingdon), at a certain place called Abingdon, in the county of Berks, over and upon a certain place then called Abingdon plain, for certain ſtakes or ſums of money of a large value, to wit, of the value of three hundred guineas, that is to ſay, of the value of three hundred and fifteen pounds, of lawful, &c. commonly called a ſweepſtakes, to wit, at Weſtminſter, in ſaid county of Middleſex: and whereas on, &c. to wit, at Weſtminſter aforeſaid, a certain diſcourſe was had and moved, by and between the ſaid George and the ſaid Dennis, of and concerning the ſaid horſe-race ſo as aforeſaid intended to be run at Abingdon aforeſaid, in the county of Berks aforeſaid, and alſo of and concerning the ſaid horſes ſo as aforeſaid intended to run for the ſame; and in that diſcourſe he the ſaid George then and there, to wit, at Weſtminſter aforeſaid, averred, that the ſaid horſe ſo called by the name of, &c. (Kelly's) would beat the ſaid horſe called Quill, and win in the ſaid horſe-race ſo as aforeſaid intended to be run at A. aforeſaid, in the ſaid county of Berks, the ſaid ſweepſtakes, to wit, the ſaid ſum of three hundred and fifteen pounds; and the ſaid Dennis then and there, to wit, at W. aforeſaid, averred that the ſaid horſe ſo called by the name of, &c. (Kelly's) would not beat the ſaid horſe called Quill, nor win in the ſaid horſe-race ſo as aforeſaid intended to be run at A. in the ſaid county of B. the ſaid ſweepſtakes, to wit, the ſum of three hundred and fifteen pounds, but that the ſaid horſe ſo called by the name of Quill would, in the ſaid intended horſe-race, beat the ſaid horſe ſo called by the name of, &c. (Kelly's) and win in the ſaid intended horſe-race the ſaid ſweepſtakes, to wit, at W. aforeſaid; it was agreed by and between the ſaid George and the ſaid Dennis, that the ſaid Dennis ſhould pay unto him the ſaid George a large ſum of money, to wit, the ſum of one hundred and twenty guineas, that is to ſay, the ſum of one hundred and twenty-ſix pounds of lawful, &c. if the ſaid horſe ſo called by the name of, &c. (Kelly's) as aforeſaid ſhould beat the ſaid horſe called Quill, and win in the ſaid horſe-race, ſo as aforeſaid intended to be run at A. aforeſaid, in the county of B. the ſaid ſweepſtakes, to wit, the ſaid ſum of three hundred and fifteen pounds, and that in caſe the ſaid horſe ſo called by the name of, &c. (Kelly's)

ſhould not beat the ſaid horſe called Quill, nor win in the ſaid horſe-race, ſo as aforeſaid intended to be run at A. in the ſaid county of Berks, the ſaid ſweepſtakes, to wit, the ſaid ſum of three hundred and fifteen pounds, but that the ſaid horſe ſo called by the name of Quill ſhould in the ſaid intended horſe-race beat the ſaid horſe ſo called by the name of, &c. (Kelly's) and win in the ſaid intended horſe-race the ſaid ſweepſtakes, then that the ſaid George ſhould pay unto the ſaid Dennis the like ſum of one hundred and twenty guineas, to wit, the ſum of three hundred and fifteen pounds, of lawful, &c. to wit, at Weſtminſter aforeſaid. And the ſaid agreement being ſo made (mutual promiſes, &c.); and the ſaid George avers that the ſaid horſe race ſo as aforeſaid intended to be run at A. in the ſaid county of B. was afterwards, to wit, on the ſaid, &c. (firſt mentioned day) run by and between the ſaid horſe ſo called by the name of Piper (Kelly's) and the ſaid horſe called by the name of Quill only, the ſaid, &c. having paid forfeit to excuſe the ſaid horſe called, &c. from running the ſaid race of A. in the ſaid county of B. to wit, over and upon the ſaid place there called Abingdon-plain, for the ſaid ſweepſtakes, to wit, for the ſaid ſum of three hundred and fifteen pounds; and that the ſaid horſe ſo called by the name of, &c. (Kelly's) as aforeſaid, did then and there in the ſaid horſe race beat the ſaid horſe called Quill, and did then and there win in the ſaid horſe-race ſo run at A. in the ſaid county of B. the ſaid ſweepſtakes, to wit, the ſaid ſum of three hundred and fifteen pounds, to wit, at W. aforeſaid: by means whereof he the ſaid Dennis then and there, according to the tenor of his ſaid promiſe and undertaking, became liable to pay, and ought to have paid, to the ſaid George, the ſaid ſum of one hundred and twenty guineas, to wit, the ſaid ſum of one hundred and twenty-ſix pounds, of lawful, &c. of all which ſaid premiſes he the ſaid Dennis afterwards, to wit, on the ſaid, &c. (the day on which the race was run) in the year aforeſaid, to wit, at W. aforeſaid, had notice. (Second Count as firſt, only leaving out every thing relative to &c.'s horſe, and making the bet that Piper would beat Quill. Third Count as firſt, only that Piper would beat. Fourth Count as ſecond, only that Piper would win, &c. Fifth Count, money lent, laid out, had and received, and common concluſion.) C. Runnington.

B. R. Aſſumpſit on a *wager* reſpecting the duty on hops.

MIDDLESEX, ſſ. John Atherfold complains of French Chriſtopher and Michael Helmden, being, &c. of a plea of treſpaſs on the caſe, &c. for that whereas on the 4th day of December A. D. 1773, at Weſtminſter, in the ſaid county of Middleſex, a certain diſcourſe was had and moved between the ſaid French, and the ſaid Michael, and the ſaid John, of and concerning the duty upon hops for the ſaid year 1773, and how much the ſame would amount unto, and upon that diſcourſe the ſaid French and Michael aſſerted and affirmed that the duty on hops for the ſaid year 1773 would amount unto the ſum of forty-ſix thouſand pounds, which aſſertion and affirmation of the ſaid French and Michael the ſaid John then and there denied; and thereupon afterwards, to wit, on the 4th day of December, in the year

year 1773 aforesaid, at Westminster aforesaid, in consideration that the said John, at the special instance and request of the said French and the said Michael *should pay* unto the said French and the said Michael the sum of ten pounds and ten shillings, they the said French and Michael then and there undertook, and faithfully promised the said John to pay unto him the said John upon the sixth day of July, which should be in the year 1774, the sum of one hundred and five pounds, if the duty was not forty-six thousand pounds, for hops that year 1773; and the said [John in fact saith, that he, confiding in the said promise and undertaking of the said French and the said Michael so made aforesaid, afterwards, to wit, on the said 4th day of December, in the year 1773 aforesaid, at Westminster aforesaid, did pay unto the said French and Michael the said sum of ten pounds and ten shillings; and the said] John in fact *farther* saith, that the duty upon hops for the said year 1773 was not, nor did the same amount unto forty-six thousand pounds, but a less sum, to wit, the sum of forty-five thousand eight hundred and fifty-seven pounds and no more, to wit, at Westminster aforesaid; whereof the said French and the said Michael afterwards, to wit, on the 1st July, in the year 1774 aforesaid, at W. aforesaid, had notice: by reason of which said premises the said French and the said Michael, according to the tenor of their aforesaid promise and undertaking so by them made in that behalf as aforesaid, became liable to pay, and ought to have paid, to the said John the sum of one hundred and five pounds, on the said 6th day of July, in the year 1774, to wit, at W. aforesaid. (Add another Count, leaving out what is within the brackets, and insert instead thereof what is in the margin.)

[*had paid.*]

[*farther.*]

Assumpsit by original in B. R. on a *wager* respecting the New-market carriage-race.

CAMBRIDGESHIRE, *ss.* ——— Townsend late of, &c. was attached to answer unto Thomas Adcocke in a plea of trespass on the case, &c. and thereupon, &c. for that whereas at the time of the making of the promise and undertaking of said defendant, hereafter next mentioned, a certain race was then shortly to be run between the right honourable the Earl of March and Keiglin of the one side, and T. Toffe esquire and ——— Sprowle on the other side, by a certain four-wheel carriage drawn by four horses, with a person sitting in or upon the said carriage, on and upon a certain place called Newmarket Heath, at Newmarket, in the county of Cambridge, for a large sum of money; and if the said carriage should in that race be drawn with the said cattle, and the person sitting in or upon the said carriage, nineteen miles within the space of one hour, then the said Earl was to win the said race; but if the said carriage should not in that race be drawn, with the said person so sitting in or upon the same, by the said cattle, nineteen miles within the space of one hour, then the said T. Toffe and ——— Sprowle were to win the said race. And whereas on the day of A. D. 1750, at Newmarket aforesaid, a certain discourse was moved and had by and between the said plaintiff and said defendant, of and concerning the said race so to be run as aforesaid, and upon that discourse the said plaintiff, on the same day and year aforesaid, at Newmarket aforesaid, at the

special instance and request of the said defendant, undertook, and then and there faithfully promised the said defendant to pay him eight pounds, in case the said Earl should not win in the said race; and in consideration thereof, the said defendant undertook, and then and there faithfully promised the said plaintiff to pay him ten pounds, in case the said Earl should win the said race; and said plaintiff avers that the said race was run afterwards, to wit, on the day of A. D. 1750 aforesaid, upon the said place called Newmarket Heath, and that the said Earl did then and there win the said race, to wit, at Newmarket aforesaid; and of all which said premises the said defendant then and there had notice: Yet, &c. (Common conclusion for the ten pounds, say he was requested same day and year, at aforesaid, &c.) There were other Counts; but I know not how they varied from this. V. LAWES.

Declaration on *wager* whether Sir H. H. ... would be called to the house of peers.

NORFOLK, to wit. John Barker late of A. was attached to answer H. B. in a plea of trespass on the case, &c. and whereupon the said H. by A. B. his attorney, complains, for that whereas, on the 1st January 1785, at A. in the said county, a certain discourse was had and moved by and between the said John and Henry of and concerning one sir H. Harbord baronet, and upon that discourse the said Henry did then and there assert and affirm, that the said sir H. H. baronet would be (1) *called to the house of peers*; which said assertion and affirmation of the said Henry, he the said John did then and there wholly deny; whereupon the said John afterwards, to wit, on, &c. at, &c. in consideration that the said Henry, at the special instance and request of the said John, had then and there paid to him the sum of one guinea, undertook, and to the said H. then and there faithfully promised, to pay to him the sum of one hundred guineas, if the said sir H. H. baronet (2) *was called to the house of peers*; and the said Henry in fact says, that the said sir H. H. afterwards, and after making of the said promise and undertaking so made as aforesaid, to wit, on the eighth day of August 1786, at, &c. was (3) *created* a peer, *and was then and there called to the house of peers*, whereof he the said John afterwards, to wit, on, &c. at, &c. had notice; by reason whereof he the said John, according to the form and effect of his said promise and undertaking, became liable to pay, and ought to have paid to the said Henry the said sum of one hundred guineas, to wit, at, &c. And whereas also (same as first Count, leaving out the words in italic.) And whereas also (same as first Count, leaving out the words in italic, and observing the marginal notes; money lent and advanced, had and received; and breach). *Drawn by* J GRAHAM.

(1) In 2d Count *created* a peer. In the 3d Count *made* a peer.

(2) In 2d Count "should be *created* a peer." In 3d Count should be made a peer.

(3) In 3d Count "*made*." 2d Count. 3d Count.

Declaration in assumpsit for money won at cards, at suit of the winner against the loser (a).

LONDON, ss. Lancelot Doubiggin, late of London, surveyor, was attached to answer unto James Smith in a plea of trespass on the case; and thereupon said plaintiff, by A. B. his attorney, complains, that whereas heretofore, to wit, on, &c. at, &c.

(a) Vide the case of Smith v. Ary, 3. 81, 258. Holt, 329. 5. Mod. 13. Salk. 14. 6. Mod. 128. 12. Mod. 69, 70, 1. Lutw. 180.

in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there agreed and undertaken, and faithfully promised said defendant, to play at cards with him said defendant, and to pay him such sum or sums of money as he the said plaintiff should lose to said defendant, by means of his so playing with him said defendant as aforesaid, when he the said plaintiff should be thereto requested, he the said defendant then and there, to wit, on the day and year aforesaid, at, &c. aforesaid, agreed to play at cards with him the said plaintiff, and to pay to him the said plaintiff all such sum or sums of money as he said defendant should lose to said plaintiff by means of his so playing with said plaintiff as aforesaid, when he the said defendant should be thereto afterwards requested; and said plaintiff avers, that he, confiding, &c. did afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, play at cards with said defendant, who did also then and there play at cards with him said plaintiff; and although said defendant, by means of his so playing at cards with said plaintiff as aforesaid, did then and there lose to him said plaintiff, who did then and there win of and from the said defendant divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of nine pounds nineteen shillings and sixpence of lawful, &c. whereof no part was then and there paid to said plaintiff; and although said defendant was requested by said plaintiff to pay him said sum of money so by him lost to said plaintiff in manner aforesaid, yet the said defendant, not regarding, &c. but contriving, &c. to deceive, &c. said plaintiff in this behalf, did not, nor would at said time, when he was so requested as aforesaid, pay, nor hath he at any time hitherto paid said sum of nine pounds nineteen shillings and sixpence, so by him lost to said plaintiff, or any part thereof, to him said plaintiff, but to pay the same, or any part thereof, to said plaintiff, hath hitherto wholly refused, and still refuses so to do, to wit, at L. aforesaid. (Count for money had and received, &c. *insimul computasset*; and common conclusion.) *Drawn by* MR. TIDD.

In the County Court of Lancaster.

Declaration in *county court by justicies* for 2l. 2s. won in a *set of bowls* two to one, play or pay.

LANCASHIRE, *ss.* Thomas Raby, by virtue of his majesty's writ of justicies, was attached to answer to Joseph Wigney in a plea of trespass on the case, to the damage of the said Joseph of ten pounds, and there are pledges to prosecute, to wit, John Doe and Richard Roe; and whereupon the said Joseph by A. B. his attorney complains, for that whereas heretofore, to wit, on the first October A. D. 1787, at Manchester, in the county of Lancaster, and within the jurisdiction of the said court, it was agreed by and between the said Thomas and the said Joseph, that they the said Thomas and Joseph should soon afterwards, that is to say, at the hour of ten of the clock of the morning of the next day, meet and play together at a certain game and pastime, that is to say, a certain pastime called the Game of Bowls, upon a certain place called a Bowling Green, situate at M. aforesaid,

 in

in the county and jurisdiction aforesaid; and thereupon, in consideration thereof, and also in consideration that the said Joseph, at the special instance and request of the said Thomas, had then and there undertaken, and faithfully promised the said Thomas, to pay him one guinea, (that is to say, one pound and one shilling, of lawful, &c.) if the said Thomas would beat the said Joseph in the said intended game, (play or pay,) whenever after the determination thereof he the said Joseph should be thereunto requested, he the said Thomas undertook, and then and there faithfully promised the said Joseph to pay him, the said Joseph, two guineas, (that is to say, the sum of two pounds and two shillings, of like lawful money,) if the said Joseph should beat the said Thomas in the said intended game, (play or pay,) whenever after the determination thereof he the said Thomas should be thereunto requested; and the said Joseph in fact says, that afterwards, to wit, at the said day, time, and place, appointed for playing and determining the said intended game, to wit, at M. aforesaid, in the county and jurisdiction aforesaid, the said Joseph was ready and willing, and then and there attended, and tendered, and offered himself against the said Thomas, to play the said game with him, according to the tenor and effect of the said agreement; but that the said Thomas did not, nor would then attend and play the said game with the said Joseph, but then and there neglected and refused so to do, and therein, and then and there wholly neglected and made default therein; whereby, and by reason whereof, and according to the tenor and effect of the said promise and undertaking of the said Thomas, he the said Thomas then and there became liable to pay to the said Joseph the said sum of two pounds and two shillings, whenever afterwards he the said Thomas should be thereto requested: Yet the said Thomas, not regarding his said promise and undertaking so by him made as aforesaid, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said Joseph in this behalf, hath not paid the sum of two pounds and two shillings, or any part thereof, to the said Joseph, (although so to do, he the said Thomas was requested by the said Joseph afterwards, to wit, on the third day of the said month of October, in the year aforesaid, and often afterwards, to wit, at M. aforesaid, within the county and jurisdiction aforesaid,) but he so to do hath hitherto wholly refused and still refuses. (2d Count, money had and received; and common conclusion.) Damages ten pounds. Suit, &c.

Conclusion.

Tho. Barrow.

On FEIGNED ISSUES.

Feigned issue to try a right of common in respect of plaintiff's freehold and copyhold estates on certain waste grounds inclosed by act of parliament, brought by a claimant against one of the commissioners for inclosing by virtue of a clause in the said act.

YORKSHIRE, to wit. Be it remembered, that on Friday next after eight days from the day of St. Hilary in this same Term, before our lord the king at Westminster, comes John Braithwaite, by

by John Damborough his attorney, and brings into the court of our said lord the king, before the king himself now here, his certain bill against John Bradford, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, of a plea of trespass on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit: Yorkshire, to wit, John Braithwaite complains of John Bradford, being in the custody, &c. for this, to wit, that whereas on the first day of January A. D. 1795, at the township of Skelton in the said county of York, a certain discourse was moved and had by and between the said John Braithwaite and John Bradford, of and concerning a certain act of parliament made and passed in the thirty-fourth year of the reign of our said lord the present king, intituled, "An act for dividing and inclosing the open "common fields, ings, moors, commons, and waste grounds with- "in the township of Skelton, in the canon fee, manor, and parish "of Ripon, in the West Riding of the county of York," and of and concerning the moors, commons and waste grounds, by the said act intended to be divided and inclosed, and the rights of common thereupon; and upon that discourse a certain question then and there arose, and was debated between the said plaintiff and the said defendant, whether the said plaintiff was entitled to a right of common in and upon the said moors, commons and waste grounds, for or in respect of the several freehold and copyhold tenements in the town of Skelton aforesaid, of him the said John Braithwaite, hereinafter mentioned, that is to say, one freehold messuage, or scite of a messuage, late Parker's, and known by the name of Terrel's Garth; one other freehold messuage, or scite of a messuage, late Parker's, and known by the name of Rigg Garth; one freehold messuage, or scite of a messuage, called Rapers; one copyhold cot, or scite of a cottage; five copyhold messuages, or scite of messuages, in Scruton Gates; or for or in respect of any of the same freehold or copyhold tenements; and thereupon the said plaintiff then and there asserted and affirmed to the said defendant, that he the said plaintiff was entitled to right of common in and upon the said moors, commons, and waste grounds, for and in respect of all the said freehold and copyhold tenements of him the said plaintiff, which said assertion and affirmation of the said John Braithwaite the said John Bradford then and there wholly denied; and thereupon afterwards, to wit, on the same day and year aforesaid, at the township of Skelton aforesaid, in the county aforesaid, in consideration that the said John Braithwaite, at the special instance and request of the said John Bradford, had then and there paid to the said John Bradford the sum of nine pounds of lawful money of Great Britain, the said John Bradford undertook, and then and there faithfully promised the said John Braithwaite to pay him the sum of forty shillings if the said plaintiff was entitled to a right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said first mentioned freehold tenement of him the said plaintiff; and the further sum of forty

forty ſhillings, if the ſaid John Braithwaite was entitled to a right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid freehold tenement of the ſaid plaintiff ſecondly above mentioned; and the further ſum of forty ſhillings, if the ſaid plaintiff was entitled to right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid freehold tenement of the ſaid plaintiff thirdly above mentioned; and alſo the further ſum of forty ſhillings, if the ſaid plaintiff was entitled to a right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid firſt mentioned copyhold tenement of the ſaid plaintiff; and the further ſum of forty ſhillings, for each of the ſaid five laſt mentioned copyhold tenements of the ſaid plaintiff, for and in reſpect of which the ſaid plaintiff was entitled to right of common in and upon the ſaid moors, commons, and waſte grounds, if the ſaid plaintiff was entitled to ſuch right of common for and in reſpect of the ſaid five laſt mentioned tenements, or any of them: and the ſaid plaintiff avers, that he the ſaid plaintiff then was and is entitled to right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of each and every of the ſaid freehold and copyhold tenements of him the ſaid plaintiff, to wit, at the townſhip of Skelton aforeſaid, in the county aforeſaid, whereof the ſaid defendant afterwards, to wit, on the ſame day and year aforeſaid, at the townſhip of S. aforeſaid, had notice; and by reaſon of the premiſes aforeſaid, the ſaid defendant then and there became liable to pay, and ought according to his ſaid promiſe and undertaking to have paid to the ſaid plaintiff the ſum of eighteen pounds, to wit, the ſum of forty ſhillings for each of the ſaid ſeveral freehold and copyhold tenements of the ſaid plaintiff, for and in reſpect of which the ſaid plaintiff was entitled to ſuch right of common as aforeſaid: Yet the ſaid defendant, not regarding his ſaid promiſe and undertaking ſo made in that behalf as aforeſaid, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid plaintiff in this behalf, hath not, although often requeſted, paid the ſum of eighteen pounds, or any part thereof, to the ſaid plaintiff, but to pay the ſame, or any part thereof, to the ſaid plaintiff, hath hitherto wholly refuſed, and ſtill doth refuſe, to the ſaid plaintiff his damage of twenty pounds; and therefore he brings his ſuit, &c.

And the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury when, &c. and ſays, that the ſaid plaintiff ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſays, that true it is that ſuch diſcourſe was had and moved, and that ſuch queſtion aroſe and was debated between the ſaid plaintiff and the ſaid defendant, and that the ſaid defendant did undertake and promiſe in manner and form as the ſaid plaintiff hath above in his ſaid declaration alledged; but the ſaid defendant further ſays, as to the ſum of forty ſhillings, part of

of the ſaid eighteen pounds in the ſaid declaration mentioned, the ſaid plaintiff was not entitled to ſuch right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid freehold tenement of the ſaid plaintiff, as the ſaid plaintiff hath in his ſaid declaration above alledged; and of this the ſaid defendant puts himſelf upon the country; and the ſaid plaintiff doth the like: and as to the ſum of forty ſhillings. other part of the ſaid ſum of eighteen pounds, in the ſaid declaration mentioned, the ſaid defendant ſays, that the ſaid plaintiff was not entitled to ſuch right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid freehold tenement of the ſaid plaintiff ſecondly above mentioned, as the ſaid plaintiff hath in his ſaid declaration above alledged; and of this the ſaid defendant puts himſelf upon the country; and the ſaid plaintiff doth the like: and as to the ſaid ſum of forty ſhillings, other part of the ſaid ſum of eighteen pounds, in the ſaid declaration mentioned, the ſaid defendant ſays, that the ſaid plaintiff was not entitled to ſuch right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid freehold tenements of the ſaid plaintiff thirdly above mentioned, as the ſaid plaintiff hath in his ſaid declaration above alledged; and this the ſaid defendant prays may be inquired of by the country; and the ſaid plaintiff doth the like: and as to the ſum of forty ſhillings, other part of the ſaid ſum of eighteen pounds, in the ſaid declaration mentioned, the ſaid defendant ſays, that the ſaid plaintiff was not entitled to ſuch right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid copyhold tenement of the ſaid plaintiff firſt above mentioned, as the ſaid plaintiff hath in his ſaid declaration above alledged; and of this the ſaid defendant puts himſelf upon the country; and the ſaid plaintiff doth the like: and as to the ſum of ten pounds, reſidue of the ſaid ſum of eighteen pounds, in the ſaid declaration mentioned, the ſaid defendant ſays, that the ſaid plaintiff was not entitled to ſuch right of common in and upon the ſaid moors, commons, and waſte grounds, for and in reſpect of the ſaid five copyhold tenements of the ſaid plaintiff, in the ſaid declaration laſtly above mentioned, or of any of them, as the ſaid plaintiff hath in his ſaid declaration laſtly above alledged; and of this the ſaid defendant puts himſelf upon the country; and the ſaid plaintiff doth the like. Therefore let a jury thereupon come before our lord the king, at Weſtminſter, on next, after twelve, &c. by whom, &c. and who neither, &c. becauſe as well, &c. the ſame day is given to the ſaid parties, at the ſame place, &c.

GEO. WOOD.

DEVONSHIRE. Declaration ſtates, that whereas plaintiff, on the 1ſt May 1791 and long before, was and ſtill is an houſe-

Feigned iſſue in C. B. between the corporation of Poole and an houſeholder within the borough right of common on the corporation lands, *vel non*.

holder,

holder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there. And whereas also defendant afterwards, to wit, on the day and year aforesaid, and long before, was and still is lawfully entitled, under and by virtue of a certain prescriptive right of common of pasture in and upon a certain waste or common, called Canford Heath, situate in the parish of Great Canford, in the county of Dorset, for all his commonable cattle, levant and couchant, upon a certain messuage, farm, and lands, with the appurtenances, situate and being at Kingston, within the said parish of Great Canford, in the county of Dorset, and also to cut and carry away furze and heath off and from the said waste or common called Canford Heath, for his necessary fuel to be burned and consumed in the said messuage, with the appurtenances, every year, at all times of the year, as need or occasion hath been and required. And whereas also afterwards, to wit, on the day and year aforesaid, at Tiverton, in the said county of Devon, a certain discourse was moved and had between plaintiff and defendant of and concerning a certain body politic corporate, incorporated heretofore by divers names of incorporation, that is to say, by the name of Mayor and Burgesses, and of Mayor, Bailiffs, and Burgesses, and of Mayor, Bailiffs, Burgesses, and Inhabitants of the Town of Poole, and now by the name of The Mayor, Bailiffs, Burgesses, and Commonalty of the Town, and of and concerning a certain right which each and every of the members of that body politic and corporate, from time whereof the memory of man is not to the contrary, have respectively had, and for all the time last aforesaid of right ought to have had, and still of right ought to have, for themselves and every of them, to turn in and depasture their commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common called Canford Heath, for necessary fuel to be burned and consumed in their respective messuages or dwelling-houses within the said borough and county of the town of Poole, every year, at all times of the year, as need or occasion hath been or required; and also whether plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, was a part or a member of the aforesaid body politic and corporate, and therefore entitled to turn in and depasture his commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common, in manner and form as the members of the aforesaid body politic and corporate have been and still are respectively entitled to do as aforesaid: And upon that discourse plaintiff then and there *asserted and affirmed*, *that by being such householder*, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, he the said plaintiff was a part or member of the

Name and style of the corporation.

Plaintiff asserts and affirms.

aforeſaid body politic and corporate, and therefore entitled to turn in and depaſture his commonable cattle, levant and couchant, within the ſaid borough and county, upon ſaid waſte or common called Canford Heath, and to cut and carry away furze and heath off and from ſaid waſte or common, in manner and form as all and every the members of the aforeſaid body politic and corporate are reſpectively entitled to do as aforeſaid; *which ſaid aſſertion* and affirmation of plaintiff, defendant then and there wholly contradicted and denied: *and thereupon afterwards*, to wit, on the ſame day and year aforeſaid, at T. aforeſaid, in the county aforeſaid, in conſideration that plaintiff, at the ſpecial inſtance and requeſt of defendant, had undertaken, and then and there faithfully promiſed ſaid defendant, to pay him the ſum of ten pounds ten ſhillings of lawful money of Great Britain, if the plaintiff, by being ſuch houſeholder, inhabiting and reſiding within the borough and county of the town of Poole, and paying ſcot and lot there as aforeſaid, was not a part or member of the aforeſaid body politic and corporate, and therefore not entitled to turn in and depaſture his commonable cattle, levant and couchant, within the ſaid borough and county, upon ſaid waſte or common called Canford Heath, and to cut and carry away furze and heath off and from ſaid waſte or common called Canford Heath, in manner and form as all and every the members of the aforeſaid body politic and corporate are reſpectively entitled to do; *and plaintiff* avers, that by being ſuch houſeholder, inhabiting and reſiding within the borough and county of the town of Poole, and paying ſcot and lot there as aforeſaid, he the ſaid plaintiff was a part or member of the aforeſaid body politic and corporate, and therefore was entitled to turn in and depaſture his commonable cattle, levant and couchant, within the ſaid borough and county, upon ſaid waſte or common called Canford Heath, and to cut and carry away furze and heath off and from ſaid waſte or common, in manner and form as all and every the other members of the aforeſaid body politic and corporate are reſpectively entitled to do; by reaſon whereof, and according to the ſaid promiſe and undertaking of defendant ſo made as aforeſaid, he ſaid defendant became liable to pay plaintiff ſaid ſum of ten pounds ten ſhillings, to wit, at T. aforeſaid, in the county of Devon aforeſaid, whereof defendant afterwards, to wit, on the day and year aforeſaid, there had notice. And whereas alſo plaintiff, on ſaid firſt of May 1791, and before, was and ſtill is an houſeholder, inhabiting and reſiding within the borough and county of the town of Poole, and paying ſcot and lot there: and whereas alſo defendant afterwards, to wit, on the ſame day and year laſt aforeſaid, and long before, was and ſtill is lawfully entitled, under and by virtue of a certain preſcriptive right, to common of paſture in and upon ſaid waſte or common called Canford Heath for all his commonable cattle, levant and couchant, upon a certain meſſuage, farm, and lands, with the appurtenances, ſituate and being at Kingſton, within the ſaid pariſh of Great Canford in the county of Dorſet, and alſo to cut and carry away furze and heath off

Defendant denies.

Promiſes.

Plaintiff avers that he is.

2d Count.

and from said heath or common for his necessary fuel to be burned and consumed in his said last-mentioned messuage, with the appurtenances, every year, at all times of the year as occasion hath been and required: and whereas also afterwards, to wit, on the same day and year aforesaid, at T. aforesaid, in the county of Devon, a certain other discourse was moved and had between plaintiff and defendant of and concerning a certain body politic and corporate, incorporated heretofore by divers names of incorporation, that is to say, by the name of Mayor and Burgesses, and of Mayor, Bailiffs, and Burgesses, and of Mayor, Bailiffs, Burgesses, and Inhabitants of the Town of Poole, and now by the name of the Mayor, Bailiffs, Burgesses, and Commonalty of the Town of Poole, and of and concerning a certain right which each and every the members, body politic and corporate, from time whereof the memory of man is not to the contrary, have respectively had, and for all the time last aforesaid of right ought to have had, and still of right ought to have, for themselves and every of them, to turn in and depasture their commonable cattle, levant and couchant, within the said borough and county of the town of Poole, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste and common for necessary fuel to be burned and consumed in their respective messuages or dwelling-houses within said borough and county of the town of Poole, every year and at all times of the year as need or occasion hath been and required; and also whether plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was a part or member of the last-mentioned body politic and corporate, [(a) within the intent and meaning of the word or term *burgenses* or burgesses, mentioned and made use of in the several acts of parliament, charters, and grants made and granted to the last-mentioned body politic and corporate, prior to the making and granting of a certain charter made and granted to that body politic and corporate by our late sovereign queen Elizabeth, on the twenty-third of June which was in the tenth year of her reign, and in the year 1568, and within the intent and meaning of the word *communitas* or commonalty mentioned and made use of in the said charter of our said late sovereign queen Elizabeth, and in other grants and charters which have been from time to time made and granted to the said last-mentioned body politic and corporate subsequently to the making and granting of that charter, and therefore entitled to turn in and depasture his commonable cattle upon said last mentioned waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid]; and upon that discourse plaintiff afterwards, to wit, on first of May 1791, at Tiverton

Whether plaintiff by being such householder, &c. came within *burgenses*,

(a) What is inserted within brackets not in the first Count.

afore-

aforesaid, in the county aforesaid, asserted and affirmed, that by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, the said plaintiff was a part or member of the last-mentioned body politic and incorporate, within the intent and meaning of the word *burgenses* or burgesses mentioned and made use of in the several acts of parliament, charters, and grants made and granted to the last-mentioned body politic and corporate, prior to the making and granting of the said charter of our late sovereign queen Elizabeth, and within the intent and meaning of the word *communitas* or commonalty mentioned and made use of in the said charter of our said late sovereign queen Elizabeth, and in the acts of parliament and other grants and charters which from time to time have been made and granted to the said last-mentioned body politic and corporate subsequently to the making and granting of the said charter of our said late sovereign queen Elizabeth, and therefore entitled to turn in and depasture his commonable cattle upon said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid; which said last-mentioned assertion and affirmation of plaintiff he said defendant then and there wholly contradicted and denied: and thereupon afterwards, to wit, on said first of May 1791, at T. aforesaid, in consideration that plaintiff, at the special instance and request of defendant, had undertaken, and to defendant then and there faithfully promised, to pay to him the sum of ten pounds ten shillings of lawful money of Great Britain, if he the said plaintiff, by being such householder, inhabiting and residing within said borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was not a part or member of the last-mentioned body politic and corporate, within the intent and meaning of the several words or terms of *burgenses* or burgesses, and *communitas* or commonalty, so respectively mentioned and made use of in the several respective acts of parliament, grants, and charters which have from time to time been made and granted to the said last-mentioned body politic and corporate, in manner as aforesaid, and therefore not entitled to turn in and depasture his commonable cattle upon the said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid; he said defendant undertook, and to plaintiff then and there faithfully promised, to pay him the sum of ten pounds ten shillings of like lawful money, if he said plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was a part or member of the said last-mentioned body politic and corporate, within the intent and meaning of

Plaintiff asserts and affirms.

Defendant denies.

of the ſaid ſeveral words or terms of *burgenſes* or burgeſſes, and *communitas* or commonalty, ſo reſpectively mentioned and made uſe of in the ſeveral and reſpective acts of parliament, grants, and charters which have from time to time been made and granted to the laſt-mentioned body politic and corporate, and in manner as aforeſaid, and therefore entitled to turn in and depaſture his commonable cattle upon ſaid laſt-mentioned waſte or common called Canford Heath, and to cut and carry away furze and heath off and from the ſaid waſte or common, in manner and form as all and every the members of the ſaid laſt-mentioned body politic and corporate are reſpectively entitled to do as laſt aforeſaid: and plaintiff avers, that he the ſaid plaintiff, by being ſuch houſeholder, inhabiting and reſiding within the borough and county of the town of Poole, and paying ſcot and lot there as laſt aforeſaid, was a part or member of the ſaid laſt-mentioned body politic and corporate, within the intent and meaning of the ſaid ſeveral words or terms of *burgenſes* or burgeſſes, and *communitas* or commonalty, ſo reſpectively mentioned and made uſe of in the ſeveral acts of parliament, grants, and charters, which from time to time have been made and granted to the ſaid laſt-mentioned body politic and corporate in manner as aforeſaid, and therefore entitled to turn in and depaſture his commonable cattle upon the ſaid laſt-mentioned waſte or common called Canford Heath, and to cut and carry away furze and heath off and from ſaid waſte or common, in manner and form as all and every the members of the ſaid laſt-mentioned body politic and corporate are reſpectively entitled to do as laſt aforeſaid; by reaſon whereof, and according to the laſt-mentioned undertaking of defendant, he ſaid defendant became liable to pay to plaintiff the ſaid laſt-mentioned ſum of ten pounds ten ſhillings, to wit, at T. aforeſaid, in the ſaid county of Devon, whereof defendant afterwards, to wit, on ſame day and year laſt aforeſaid, there had notice. (Common concluſion in aſſumpſit.) Damages twenty pounds.

Plaintiff avers that he is within the meaning, &c.

Feigned iſſue to try whether the rights of certain perſons claiming common were extinguiſhed.

YORKSHIRE, to wit. W. H. and H. C. being reſpectively owners of certain meſſuages, lands, and tenements ſituate and being in the hamlet or diſtrict of, &c. in the pariſh of, &c. in the ſaid county of York, complain of W. T. eſq. J. G. clerk, J. G. and G. W. being reſpectively perſons claiming right of common in the moors or waſte grounds directed to be divided and incloſed by virtue of a certain act of parliament made and paſſed in the twenty-ſeventh year of the reign of our ſovereign lord the preſent king, entitled, "An act for dividing and encloſing certain moors, commons, or waſte grounds in the pariſh of, &c. in the county of York, being in the cuſtody of, &c." for that whereas on, &c. at, &c. in, &c. a certain diſcourſe was moved and had by and between the ſaid plaintiffs and the ſaid defendants, of and concerning a certain common or parcel of waſte ground called, &c. within the ſaid pariſh of, &c. in the ſaid act alſo mentioned, and the rights of common thereon to which

which the ſaid W. H. was intitled for and in reſpect of his ſaid meſſuages, lands, and tenements; and alſo of and concerning the proportion of the ſame moor, common, or parcel of waſte ground which ought to be allotted to the ſaid W. H. for and in reſpect of his aforeſaid meſſuages, lands, and tenements; and upon that diſcourſe a certain queſtion then and there aroſe and was debated between the ſaid plaintiffs and the ſaid defendants, whether the reſpective commons of paſture and turbary which the ſaid W. H. was entitled to upon the ſaid laſt-mentioned moor, common, or parcel of waſte ground, for and in reſpect of his ſaid meſſuages, lands, and tenements, or any of them, ought to be apportioned, by reaſon that certain moor, commons, or waſte grounds called, &c. had theretofore been divided and incloſed under and by virtue of a certain act of parliament, made and paſſed in the twentieth year of our ſaid lord the king, intitled, "An act for dividing and incloſing certain moor, commons, or waſte grounds in the manor "or townſhip of, &c. in the Weſt Riding of the county of York," and that a certain allotment had been made of a certain part of the ſaid laſt-mentioned moor, commons, or waſte grounds to the then owners of the ſaid meſſuages, lands, and tenements, now of the ſaid W. H.; whereby, and by virtue of the ſaid laſt-mentioned act, the rights of common upon the ſaid laſt-mentioned moors, commons, or waſte grounds which at the time of the paſſing of the ſaid laſt-mentioned act, were appurtenant to the reſpective meſſuages, lands, and tenements of the ſaid W. H. were extinguiſhed and deſtroyed; and whether the ſaid W. H. was intitled to no more than a proportionable allotment in the ſaid moor, common, or waſte ground called, &c. having regard and according to ſuch allotment as aforeſaid; and the ſaid plaintiffs then and there aſſerted and affirmed, that the reſpective commons of paſture and turbary, which the ſaid W. H. was intitled to upon the ſaid laſt-mentioned moor, common, or parcel of waſte ground for and in reſpect of the ſaid meſſuages, lands, and tenements, ought not to be apportioned, by reaſon of the ſaid moors, commons, or waſte grounds called, &c. had theretofore been divided and incloſed under and by virtue of the ſaid act of parliament made and paſſed in the twentieth year of the reign of our ſaid lord the now king; and that the ſaid allotment had been made of certain parts of the ſaid laſt-mentioned moors and commons, or waſte grounds, to the then owners of the ſaid meſſuages, lands, and tenements now of the ſaid W. H. whereby and by virtue of the ſaid laſt-mentioned act, the rights of common upon the ſaid laſt-mentioned moors, commons, or waſte grounds, which at the time of the paſſing of the ſaid laſt-mentioned act were appurtenant to the reſpective meſſuages, lands, and tenements of the ſaid W. H. were extinguiſhed and deſtroyed; and the ſaid W. H. was intitled to an allotment in the ſaid moor, common, or parcel of waſte ground called, &c. without having regard to ſuch apportionment as aforeſaid: which ſaid aſſertion and affirmation of the ſaid plaintiffs they the ſaid defendants wholly contradi[illegible]; and thereupon afterwards,

 to

to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendants, had then and there paid to the said defendants the sum of five pounds of lawful money of Great Britain, they the said defendants undertook, and then and there faithfully promised the said plaintiffs that they the said defendants would pay to the said plaintiffs the sum of ten pounds in case the respective commons of pasture and turbary, which the said W. H. was entitled to upon the said last-mentioned moor, common, or parcel of waste ground for and in respect of his said messuages, lands, and tenements, or any of them, ought not to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of the said act of parliament made and passed in the twentieth year of, &c.; and that the said allotment had been made of a certain part of the said last-mentioned moors, commons, or waste grounds to the then owners of the said messuages, lands, and tenements, now of the said W. H. whereby and by virtue of the said last-mentioned act the rights of common upon the said last-mentioned moors, commons, or waste grounds, which at the time of the passing of the said act were appurtenant to the said respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was intitled to an allotment in the said moor, common, or parcel of waste ground called, &c. without having regard to such apportionment as aforesaid. And the said plaintiffs in fact, say, that the said respective commons of pasture and turbary, which the said W. H. was intitled to upon the said last-mentioned moor, common, or parcel of waste ground for and in respect of his said messuages, lands, and tenements ought not to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of the said act of parliament made and passed in the twentieth year of, &c; and that the said allotment had been made of a certain part of the said last mentioned moors, &c. to, &c. of the said messuages, &c. now of the said W. H. whereby and by virtue of the said last-mentioned act, the rights of common upon the said last-mentioned moors, commons, or waste grounds, which at the time of the passing of the said last-mentioned act were apportioned to the respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was intitled to an allotment in the said moor, common, or waste ground, called, &c. without having regard to such apportionment as aforesaid; whereof the said defendants afterwards, to wit, on, &c. at, &c. had notice, and by reason of the said last-mentioned premises then and there became liable to pay, and ought to have paid the said plaintiffs the sum of ten pounds, to wit, at, &c. And whereas, &c. [Second Count same as the first, except only putting plaintiff A. C. in the room of W. H. and common conclusion.] A. CHAMBRE.

And

And the said defendants by A. B. their attorney, come and defend the wrong and injury when, &c. and say *actio non*; because as to the first-mentioned promise and undertaking they say, that true it is that such discourse was had and moved, and such question arose and was debated by and between said plaintiffs and the said defendants as in the first Count of the said declaration is for that purpose mentioned; and that they the said defendants did undertake and promise in manner and form as the said plaintiffs have in the said first Count of the said declaration above thereof complained against them; but the said defendants further say, that the respective commons of turbary and pasture, which the said W. H. was entitled to upon the said moor, common, or parcel of waste ground called, &c. for and in respect of the said messuages, lands, and tenements ought to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and enclosed under and by virtue of the said act of parliament, made and passed in the twentieth year of, &c.; and that the said allotment had been made of a certain part of the said last-mentioned moors, commons, or waste grounds to the then owners of the said messuages, lands, and tenements, now of the said W. H. whereby and by virtue of the said last mentioned act, the right of common upon the said last-mentioned moors, commons or waste grounds, which at the time of the passing of the said last-mentioned act were appurtenant to the said respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was not entitled to an allotment in the said moor, common, or parcel of ground called, &c. without having regard to such apportionment as aforesaid, as the said plaintiffs have above alledged, and of this they put themselves upon the country, &c. [Second plea to second Count, same, making it agreeable to second Count.] E. LAW.

1780. The Court of King's Palace at Westminster.

An entry of a feigned issue in the Palace Court, to try whether defendant had ever become bail for one H. M. in another action; with the postea thereon.

ROBERT B. by R. K. his attorney, complains against Richard B. of a plea of trespass on the case, for that whereas, on the first day of July, A.D. 1779, at Southwark, in the county of S. and within the jurisdiction of this court, a certain discourse was moved and had by and between said plaintiff and said defendant, of and concerning a certain cause or suit then depending in the said court of our lord the king of his palace of Westminster aforesaid, between the said Robert B. plaintiff and one H. M. defendant, in a certain plea of trespass on the case, to the damage of the said Robert B. of ninety-nine shillings, and upon that discourse a question then and there arose, and was debated, between the said plaintiff and the said defendant, whether the said defendant had ever become bail for the said H. M. in the said plea or suit or not; and the said plaintiff then and there asserted and affirmed, that the said defendant had become bail for the said H. in the said plea or suit, which said assertion and affirmation of the

plaintiff the said defendant then and there wholly denied, and asserted to the contrary thereof; and thereupon afterwards, to wit, on the same day and year aforesaid, at S. aforesaid, in the county and jurisdiction aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of five pounds of lawful, &c. he the said defendant undertook, and to the said plaintiff then and there faithfully promised, to pay to him the said plaintiff the said sum of ten pounds of like lawful money, in case he the said defendant had ever become bail for the said H. M. in the said plea or suit: and the said plaintiff in fact saith, that the said defendant, before the making of the promise and undertaking aforesaid, to wit, on the 14th of August, A. D. 1778, had become bail in the said palace court for the said H. M. to wit, in the palace court then held at S. aforesaid, in the county and jurisdiction aforesaid, whereof the said defendant afterwards, to wit, on the first day of July, A. D. 1779, at, &c. aforesaid, in, &c. aforesaid, had notice; by reason whereof the said defendant became liable to pay, and ought to have paid, to the said plaintiff the said sum of ten pounds, whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. to deceive, &c. the said plaintiff, hath not as yet paid the said sum of ten pounds, or any part thereof, to the said plaintiff, (although so to do, &c.) but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of twenty pounds, for which he brings his suit, &c.; and doth also aver that, &c.

And the said defendant, by Richard H. his attorney, comes and defends the wrong and injury when, &c. and says, that true it is that such discourse was had and moved by and between the said plaintiff and the said defendant, as the said plaintiff hath above alledged, and that the said defendant did promise and undertake in manner and form as the said plaintiff hath above in and by his said declaration alledged against him; but the said defendant further saith, that the said plaintiff *actio non*; because he saith, that he the said defendant had not, at any time before the making of the said promise and undertaking of the said defendant, become bail for the said H. M. in the said plea or suit, as by the said declaration is above alledged; and of this he puts himself upon his country, and the said plaintiff doth the like. It is therefore commanded by the said court, to the bearers of the virges of the king's household, the officers and ministers of the said court, and to every of them, that they, or one of them, do cause to come before the judges of the said court, at the court of the king's palace of Westminster, on Friday the fourteenth day of April next following to be held here, to wit, at S. aforesaid, in the said county of S. within the jurisdiction aforesaid, twelve free and lawful men of the neighbourhood of S. aforesaid, in the said county of S. within the jurisdiction of the court aforesaid, by whom the truth of the matter may be the better known, and who are in no wise of kin

Venire facias in Palace Court.

either

either to the said plaintiff or the said defendant, to make a certain jury between the said plaintiff and the said defendant, between whom the contention thereupon is, and who have put themselves upon the said jury: the same day is given by the said court to the parties aforesaid here, &c. At which day, to wit, at the court of the king's palace of Westminster lastly above mentioned, holden before the judges of the court here, to wit, at Southwark aforesaid, in the said county of S. within the said jurisdiction of the said court, on Friday the said fourteenth day of April, in the twentieth year of the reign of our lord the now king, comes as well the said plaintiff as the said defendant, by their aforesaid attornies; and the jurors of the jury before mentioned, to wit, W. R. [&c. set out the names of the jury from the panel] being called, likewise came; who being chosen, tried, and sworn to speak the truth concerning the premises, say upon their oath, that the said defendant had not, at any time before the making of the promise and undertaking of the said defendant, become bail for the said H. M. in the said plea or suit mentioned in the said declaration of the said plaintiff, as by the said declaration is above alledged. *Postea in a feigned issue in the Palace Court.*

There is no judgment entered upon a feigned issue. The only entry that is necessary, or indeed that can take place, is that of the verdict, which I have drawn upon the production of the record which the court proceed on in the original action.

V. LAWES.

MIDDLESEX, ss. W. W. late of Charlotte-street, Bloomsbury, in the county of M. esquire, was attached to answer J. G. and R. J. of a plea of trespass on the case; and whereupon the said plaintiffs, by A. B. their attorney, complain, that whereas, on the seventh day of February, A. D. 1794, at Westminster, in the said county of M. a certain discourse was had and moved between the said plaintiff and the said defendant, of and concerning the promissory notes and warrants of attorney following, that is to say, one promissory note, bearing date the twenty-ninth day of August, A. D. 1785, made and drawn by one Thomas Wood, for the payment of the sum of forty-six pounds by the said Thomas Wood to the said defendant, or his order, two months after the date thereof, and indorsed with the name of the said defendant, one other promissory note, [&c, setting out forty-eight notes, as before] and also a certain warrant of attorney, bearing date the twenty-ninth day of August in the year aforesaid, and signed and sealed by the said defendants, authorizing and empowering certain attornies therein named to suffer judgment to be signed against the said defendant for the sum of one thousand six hundred pounds in the court of our said lord the king of the bench at Westminster, as therein mentioned, in order to secure the payment by the said defendant to the said Griffin (one of the plaintiffs) of the said several sums of money in the said notes contained; which said notes so *Feigned issue to try whether any and what consideration had been paid for certain promissory notes and a warrant of attorney.*

indorsed as aforesaid, and which said warrant of attorney, on the twenty-ninth day of August 1785, at Westminster aforesaid, were delivered by the said defendant to the said Robert (one of the said plaintiffs); and upon that discourse it was then and there, to wit, on the said twenty-ninth day of August, A. D. 1785 aforesaid, at, &c. aforesaid, debated between the said plaintiffs and the said defendants, "whether any and what consideration was ever and "when paid to the said defendant, by any and what person or "persons, for the said promissory notes and warrant of attorney, "and either and which of them;" and thereupon the said plaintiff then and there asserted and affirmed, that the sum of two hundred and forty pounds was, after the delivery of the said notes and warrant of attorney, paid by the said Robert to the said defendant, as a consideration for the said promissory notes and warrant of attorney; which said assertion of the said plaintiffs he the said defendant then and there wholly denied, and he the said defendant then and there likewise denied that any consideration whatsoever was ever paid to the said defendant by any person or persons for the said promissory note and warrant of attorney, or any or either of them: and thereupon afterwards, to wit, on the said twenty-ninth of August, in the year aforesaid, at, &c. aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of five pounds of lawful, &c. the said defendant undertook, &c. to pay the sum of twelve pence for every twenty shillings of the [illegible] sum of two hundred and forty pounds [illegible] [illegible] delivery of th[illegible] promissory notes [illegible] attorney, or any or either of them, or at any other time whatsoever, paid to the said defendant by the said plaintiffs, or either of them, or any other person or persons, as a consideration for the said promissory notes and warrant of attorney, or any or either of them; and the said plaintiffs in fact say, that the said sum of two hundred and forty pounds, and every part thereof, was, after the said delivery of the said promissory notes and warrant of attorney, to wit, on the twenty-ninth of August in the year aforesaid, at, &c. aforesaid, paid to the said defendant by the said Robert, as a consideration for the said promissory notes and warrant of attorney; and by reason of the premises he the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff the sum of twelve pounds, being the sum of twelve pence for every twenty shillings of the said sum of two hundred and forty pounds, according to his said promise and undertaking so made as aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. hath not paid, &c. the said sum of twelve pounds, or any part thereof, (although, &c.) Damages, &c. suit, &c.

And the said defendant, by C. D. his attorney, comes and defends the wrong and injury when, &c. and says, that the said plaintiff *actio non*; because he says, that true it is that such discourse was had and moved, and it was debated by and between the said

said plaintiff and the said defendant as in the said declaration is for that purpose mentioned, and that he the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him; but the said defendant further saith, that neither the said sum of two hundred and forty pounds, or any part thereof, was on or after the delivery of the said promissory notes and warrant of attorney, or either of them, or at any time whatsoever, paid to the said defendant by the said plaintiffs, or either of them, or any other person or persons, as a consideration for the said promissory notes and warrant of attorney, or any or either of them; and of this he puts himself upon the country, and the said plaintiff doth the like, &c.; therefore, &c.

S. HOLROYD.

(a) MIDDLESEX, *ss.* J. S. late of Westminster, in the county of Middlesex, yeoman, was attached to answer unto T. S. M. S. E. S. and E. B in a plea of trespass on the case, &c. and thereupon the said plaintiffs, by A. B. their attorney, complain, that whereas on the first day of January, A. D 1770, to wit, at Westminster, in the county of Middlesex aforesaid, a certain discourse was had and moved by and between the said plaintiffs of the one part, and said J. S. *the said defendant in this suit*, of the other part, of and concerning divers *freehold estates, to wit, an undivided moiety of divers freehold messuages, lands, and tenements, situate and being in the several counties of Middlesex and Hertford, and of and concerning a certain leasehold estate, to wit, an undivided moiety of a leasehold estate, situate in the parish of, &c. in the said county of &c.* late the estates of one J. S. deceased, and of which said freehold estates the said J. S. deceased, on, &c. (the date of the will) was seised in his demesne as of fee, and afterwards died seised thereof, *and of which said leasehold estates the said J. S. deceased, on the day and year last mentioned, was possessed, and afterwards died so possessed thereof*; and also of and concerning a certain paper writing, bearing date, &c. (the date of the will) purporting in itself to be the last will and testament of the said J. S. deceased, and whether the said J. S. deceased did by the said will devise the said freehold *and leasehold estates* or not; and upon that discourse the plaintiffs then and there asserted and affirmed, that the said J. S. deceased did, by the said paper writing, dated the said, &c. devise the said freehold *and leasehold* estates; which said assertion and affirmation of the said plaintiffs he the said defendant then and there wholly denied, and then and there alledged the contrary thereof: and thereupon afterwards, to wit, on the said first day of January, in the year 1770 aforesaid, at, &c. aforesaid, the said plaintiffs, at the special instance and request of the said defendant, undertook and then and there faithfully promised the said defendant, to pay to him the sum of five pounds, in case the said J. S. deceased did not by the said paper writing, dated, &c. devise the said freehold and *leasehold estates*; and in consideration

A feigned issue out of chancery, viz. devisavit vel non, (in C. B.) of freehold and leasehold estates.

 thereof

thereof the said defendant then and there undertook, and faithfully promised the said plaintiffs, to pay them the sum of ten pounds in case the said J. S. deceased did, by the said paper writing, dated, &c. devise the said freehold and leasehold estates: and the said plaintiffs aver, that the said J. S. deceased did, by the said paper writing, dated, &c. devise the said freehold and leasehold estates, to wit, at Westminster aforesaid, whereof the said defendant afterwards, to wit, on the said first of January 1770. at, &c. aforesaid, had notice; by means whereof the said defendant, according to the tenor of his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said plaintiffs the said sum of ten pounds, to wit, at, &c. aforesaid: Yet the said defendant, not regarding his said promise and undertaking so by him made in this behalf as aforesaid, but contriving, &c. to deceive, &c. the said plaintiffs in this behalf, hath not as yet paid the said sum of ten pounds, or any part thereof, to the said plaintiffs, or to either of them, (although to do this the said defendant was requested by them the said plaintiffs afterwards, to wit, on the said first of January 1770 aforesaid, and often afterwards, to wit, at, &c aforesaid,) but he to pay the same, or any part thereof, to the said plaintiffs, or to any or either of them, hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said plaintiffs, or to any or either of them; wherefore the said plaintiffs say, that they are injured and have sustained damage to the value of twenty pounds, and therefore they bring their suit, &c.

(a) In the common pleas they have no memorandum to the issue, unless in special cases, such as privilege.

Plea thereto.

And the said defendant, by C. D. his attorney, comes and defends the wrong and injury when, &c. and saith, that true it is that such a discourse was had and moved by and between the said plaintiffs of the one part, and the said defendant of the other part, in manner and form as the said plaintiffs have above alledged, and that said J. S. deceased was, on, &c. (the date of the will) seised in his demesne as of fee of and in the said freehold estates, and that he afterwards died seised thereof, and that the said J. S. deceased was, on the said, &c. possessed of the said leasehold estates, and that he afterwards died so possessed thereof, in manner and form as the said plaintiffs have above alledged, and that he the said defendant did undertake and promise in manner and form as the said plaintiffs have above alledged; but the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action against him, because he saith, that the said J. S. deceased did not by the said paper writing, dated, &c. devise the said freehold and leasehold estates in manner and form as the said plaintiffs have above in that behalf alledged; and of this he puts himself upon the country, and the said plaintiffs do the like: therefore the sheriff is commanded that he cause to come here, in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who

neither

neither, &c. to recognize, &c. becauſe as well, &c. ; the ſame day is given to the ſaid parties there, &c.

LONDON, to wit. Be it remembered, &c. M. B. and H. F. debtors to our ſovereign lord the now king, come before the barons of the exchequer, on Monday the twenty-third of January in this ſame Term, by A. B. their attorney, and complain by bill againſt J. E. J. T. C. and L. F. preſent here in court, of the ſame day, of a plea of treſpaſs on the caſe, &c. ; for that whereas, on the firſt of January, A. D. 1775, at L. to wit, &c. a certain diſcourſe was had and moved by and between the ſaid plaintiffs of the one part, and the ſaid defendants of the other part, of and concerning the ſaid defendants having wrongfully taken and held poſſeſſion of a certain meſſuage or dwelling-houſe, with the appurtenances, in Lombard-ſtreet, in the city of L. which had, before the committing of that grievance, been aſſigned to the ſaid plaintiffs for the reſidue of a certain term of years then and yet to come and unexpired, and of and concerning the damage and injury which the ſaid plaintiffs had ſuſtained by the ſaid defendants ſo wrongfully taking and holding poſſeſſion thereof, and what the ſame amounted unto ; and upon that diſcourſe a certain queſtion then and there aroſe between the ſaid plaintiffs and the ſaid defendants, how much the ſaid plaintiffs had been damnified or injured by the ſaid defendants taking and holding poſſeſſion of the ſaid houſe and premiſes ; and on that diſcourſe the ſaid plaintiffs then and there, to wit, on the ſaid firſt of January in the ſaid year 1775 aforeſaid, aſſerted and affirmed that their damages by them ſuſtained in that behalf, amounted in the whole to a large ſum of money, to wit, the ſum of three hundred pounds : which ſaid aſſertion and affirmation of the ſaid plaintiffs they the ſaid defendants then and there wholly denied, and on the contrary aſſerted and affirmed that ſuch damages did not amount to more than forty pounds : whereupon the ſaid plaintiffs then and there, at the ſpecial inſtance and requeſt of the ſaid defendants, paid to the ſaid defendants the ſum of ten pounds, in conſideration whereof the ſaid defendants undertook, and faithfully promiſed the ſaid plaintiffs to pay them twenty pounds in caſe the damages ſuſtained by the ſaid plaintiffs, by the ſaid defendants wrongfully taking and holding poſſeſſion of the houſe, did amount to the ſaid ſum of three hundred pounds, or to more than forty pounds ; and the ſaid plaintiffs aver, that the damages by them ſuſtained, on account of the ſaid defendants wrongfully taking and holding poſſeſſion of the ſaid houſe, did amount to a large ſum, and more than the ſum of forty pounds, and by reaſon of the premiſes, the ſaid defendants, according to their promiſe and undertaking aforeſaid, became liable to pay, and ought to have paid to the ſaid plaintiffs, the ſum of twenty pounds, to wit, at L. &c. aforeſaid, whereof the ſaid defendants then and there had notice : Yet the ſaid defendants, not regarding, &c. but contriving, &c. have not, nor hath either of

A feigned iſſue (in the exchequer of pleas), viz. damnificatus vel non præter, ſo much by defendant's taking and holding a wrongful poſſeſſion of plaintiff's houſe.

of them, yet paid the said sum of twenty pounds, or any part thereof, to the said plaintiffs, or either of them, (although, &c.) but they so to do have, and each of them hath, hitherto wholly refused, and still do, and each of them doth, refuse so to do, to the said plaintiffs their damage of forty pounds, whereby they are less able to satisfy to our said lord the now king the debts which they owe to his majesty's exchequer; and therefore they bring their suit, &c.

Plea nondamnificatus præter 40l.

And the said defendants, by C. D. their attorney, come and defend the wrong and injury when, &c. and say, that true it is that such discourse was had and moved by and between the said plaintiffs and the said defendants, as the said plaintiffs have above alledged, and that upon such discourse such questions did arise between them as the said plaintiffs have alledged, and that the said defendants did promise and undertake in manner and form as the said plaintiffs have above alledged; yet the said defendants say, that the said plaintiffs ought not to have their aforesaid action thereof maintained against them, because they say that the damage sustained by the said plaintiffs by reason of the said defendants so wrongfully taking and holding possession of the said house, does not in the whole amount to more than the sum of forty pounds, as they have above alledged; and of this they put themselves upon the country; and the said plaintiffs do the like, &c.; therefore, &c.

Feigned issue on a commission of bankrupt to try whether defendant owed the plaintiffs one hundred pounds at the time of issuing the commission.

MIDDLESEX, *ss.* Be it remembered, that on Monday next after the morrow of All Souls, in this same Term, before our lord the king, at Westminster, come Henry Tipping and Thomas Prickett, by B. W. their attorney, and bring into the court of our said lord the king now here, their certain bill against Robert Snelgrove, being, &c. in a plea of trespass on the case, &c. and there are pledges for the prosecution of the said bill, to wit, John Doe and Richard Roe, which said bill followeth in these words, to wit: Middlesex *ss.* Henry Tipping and Thomas P. complain of R. S. being, &c. in a plea, &c. for that whereas, before the making of the promise and undertaking of the said Robert hereafter mentioned, a commission of bankrupt was duly awarded and issued against the said Robert; and thereupon afterwards and before the making of the promise and undertaking of the said Robert hereafter mentioned, to wit, on the first of November A. D. 1782, to wit, at Westminster in the county of Middlesex aforesaid, a certain discourse was had and moved by and between the said Henry and Thomas and the said Robert of and concerning the said commission of bankrupt, and upon that discourse a question then and there arose, between the said Henry and Thomas and the said Robert, whether the said Robert was indebted to the said Henry and Thomas in the sum of one hundred pounds, at the time of the issuing of the aforesaid commission of bankrupt against the said Robert; and upon that discourse the said H. and T. then and there,

there, to wit, on the day and year aforesaid, at Westminster aforesaid, asserted and affirmed that the said Robert was indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing of the aforesaid commission of bankrupt against the said Robert; which assertion and affirmation of the said H. and T. the said Robert then and there wholly denied, and then and there asserted and affirmed the contrary thereof; and thereupon afterwards, on the day and year last aforesaid, at Westminster aforesaid, in consideration that the said H. and T. at the special instance and request of the said Robert, had then and there undertaken, and faithfully promised the said Robert to pay him the sum of ten pounds if the said Robert was not indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing of the aforesaid commission of bankrupt against the said Robert, he the said Robert then and there undertook, and faithfully promised the said H. and T. to pay them the sum of ten pounds, if he the said Robert was indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing the aforesaid commission of bankrupt against the said Robert: and the said H. and T. in fact say, that the said R. was indebted to them the said H. and T. in the sum of one hundred pounds at the time of the issuing of the aforesaid commission of bankrupt against the said Robert; by reason whereof the said Robert, according to the tenor of his aforesaid promise and undertaking, afterwards, and before the exhibiting of the bill of the said H. and T. to wit, on the day and year last aforesaid, at Westminster aforesaid, became liable to pay to the said H. and T. the sum of ten pounds, whereof the said R. then and there had notice: Yet the said Robert, not regarding his aforesaid promise and undertaking, by him in manner and form aforesaid made, but contriving, &c. conclude.

And the said Robert, by A. B. his attorney, comes and defends the wrong and injury when, &c. and saith, that true it is that such discourse was had and moved by and between him and the said Henry and T. and that such question did then and there arise, as the said H. and T. have in their declaration alledged. and that he the said Robert did undertake and promise in manner and form as the said H. and T. have above thereof complained against him; but the said Robert saith, that the said H. and T. ought not to have their aforesaid action thereof maintained against him, because he saith that he the said Robert was not indebted to the said Henry and T. in the sum of one hundred pounds at the time of issuing the aforesaid commission of bankrupt against him the said Robert; and of this he the said Robert puts himself upon the country, and the said H. and T. do the like, &c.; therefore let a jury come before our lord the king at Westminster on Tuesday next after fifteen days of Saint Martin, and who are neither, &c. to recognize, &c. because as well, &c.; the same day is given to the said parties here, &c. Plea.

V. Lawes.

LONDON,

ON FOREIGN JUDGMENTS.

Declaration in assumpsit general in B. R. on *a judgment in a foreign court* in an action of assumpsit of 227l. 18s. 4d. current money for the debt, and 1584 3 5ths lb. of tobacco, for the costs and charges.
Second Count, General *indebitatus* for the money only recovered.

LONDON, to wit. George Vansant Mann complains of David Reese being, &c. for that whereas the said plaintiff heretofore, to wit, on the thirteenth day of May, A. D. 1788, by the consideration and judgment of a certain court, called a General Court for the Western Shire of the State of Maryland, holden at the city of Annapolis, in America, in parts beyond the seas, on the said thirteenth day of May, in the said year of Our Lord 1788, recovered against the said defendant as well the sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of Maryland, for his damages which he had sustained by reason of the non-performance of certain promises and assumptions before then made by the said defendant to the said plaintiff, as also to deliver one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, by the said court there unto the said plaintiff on his assent adjudged for his costs and charges by him about this suit in that behalf laid out and expended, whereof the said David is convicted; which said judgment still remains in that court unreversed, unpaid, and unsatisfied, that is to say, at L. in the parish of St. Mary-le Bow, in the ward of Cheap; and the said plaintiff has not yet obtained execution of the said judgment: by reason of all which premises, the said defendant, after the rendering of the said judgment, to wit, on the said first day of June, in the said year of Our Lord 1788, became and was liable to pay the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of Maryland, to the said plaintiff, and to deliver to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco: and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, to wit, at L. aforesaid, in the parish and ward aforesaid, undertook, and to the said plaintiff then and there faithfully promised, to pay the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. to the said plaintiff, and to deliver to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, when he the said defendant should be thereunto afterwards requested: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not (although often requested) yet paid the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. or any part thereof, to the said plaintiff, or delivered to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, or any part thereof, but, on the contrary, he the said defendant hath hitherto wholly neglected and refused, and still doth neglect and refuse, so to do, or in any manner to satisfy the

the said plaintiff for the same, to wit, at L. aforesaid, in the parish and ward aforesaid. And the said plaintiff in fact saith, that at the time of the rendering of the said judgment, the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence, current money of the said State of Maryland, was and still is of great value, to wit, of the value of one hundred and thirty-six pounds fifteen shillings of lawful, &c. and that the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, so adjudged to the said plaintiff as aforesaid, then were and now are of great value, to wit, of the value of ten pounds of lawful, &c. to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas also, the said plaintiff heretofore, to wit, on the thirteenth day of May, in the year of Our Lord 1788, by the consideration and judgment of a certain court, called a General Court for the Western Shire of the State of M. holden at the city of Annapolis, in America, in parts beyond the seas, on the said thirteenth day of May, in the said year of Our Lord 1788, recovered against the said defendant the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence, current money of the said State of M. for his damages which he had sustained by reason of the non-performance of certain promises and assumptions before then made by the said defendant to the said plaintiff, whereof the said defendant is convicted; which said last-mentioned judgment still remains in that court in full force, unreversed, unpaid, and unsatisfied, that is to say, at L. aforesaid, in the parish and ward aforesaid, and the said plaintiff hath not yet obtained execution of the said last-mentioned judgment: and the said plaintiff in fact says, that the said last-mentioned two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. at the time of recovering the said last-mentioned judgment, were and yet are of great value, to wit, of the value of one hundred and thirty-six pounds fifteen shillings of lawful, &c. to wit, at L. aforesaid, in the parish and ward aforesaid: by virtue of which said last-mentioned judgment, the said defendant, after the recovering thereof, to wit, on the first June, A. D. 1788, to wit, at L. aforesaid, in the parish and ward aforesaid, was indebted to the said plaintiff in the said sum of one hundred and thirty-six pounds fifteen shillings of lawful, &c. upon the said last-mentioned judgment; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last-mentioned sum of money, when he the said defendant should be thereto afterwards requested. (Counts for goods sold and delivered, money paid, lent, had, and received; account stated, and common conclusion. Pledges, &c.).

Averment of the value in sterling money of the tobacco and money recovered.

Second Count, General *indebitatus assumpsit* on judgment in the court of Maryland.

Vi. Walker against Witter, Dougl. 1 to 7. See plea to this declaration, post. Pleas in Assumpsit.

Declaration in *assumpsit* on a *judgment* recovered against defendant *in the Stannary Court of Cornwall.*

CORNWALL, to wit. J. C. complains of T. C. being, &c. for that whereas the said T. C. on, &c. at, &c. was indebted to the said J. C. in thirty pounds of lawful, &c. by a certain *decree or order of the court of stannaries* in Cornwall, holden before A. B. doctor of laws, vice-warden of the said Stannaries, to wit, at, &c. ordered and decreed to be paid by the said T. C. to the said J. C. as well for twenty-three pounds due from the said T. C. to the said J. C. on an account stated, as for seven pounds to the said J. C. by the said court awarded for his costs of prosecuting his said petition in the said court, which said decree and order being in full force and effect, and unsatisfied, he the said T. C. in consideration thereof, afterwards, to wit, on, &c. at &c. undertook, and then and there faithfully promised the said J. C. to pay him the said sum of money when he the said defendant should be thereunto afterwards requested: and whereas also the said T. C. afterward, to wit, on, &c. at, &c. was indebted to the said J. C. in other thirty pounds of like lawful money, for so much money by a certain other decree or order of the said court of the Stannaries of Cornwall, holden before W. B. doctor of laws vice-warden of the Stannaries, to wit, at, &c. ordered and decreed to be paid to the said J. C. by the said T. C. which said decree or order still is in full force and effect, and unsatisfied, and being so indebted, &c. (Add the money Counts and common conclusion.) J. BULLER.

Declaration in *assumpsit* for money due on a *judgment* of the vice-admiralty court in West Florida, the costs of that suit, and of an unsuccessful appeal to the king in council.

MIDDLESEX, *ss.* For that whereas heretofore, to wit, on the second day of June, A. D. 1772, in a certain court of our lord the now king, called a Court of Vice-admiralty, holden at Pensacola, in the province of West Florida, in North America, in and for the said province (to wit, at Westminster, in the county of Middlesex aforesaid), before the honourable Alexander Macpherson, esquire, then judge-surrogate and commissary deputy of the court aforesaid, it was published, promulgated, pronounced, and decreed by the said judge, in a certain cause civil and maritime, then lately depending in the said court between the said plaintiff and the said defendants, that said defendants, the defendants in that cause, should pay to said plaintiff, the libellant in that cause, the sum of one hundred and one pounds nine shillings and eightpence farthing, of lawful, &c. (being the first cost of a certain trunk of goods, wares, and merchandizes of the said plaintiff, theretofore shipped on board a certain brigantine or vessel called the Africa, whereof said S. *(one of defendants)* then was master, and the said P. *(the other defendant)* one of the part-owners (to be delivered to the said plaintiff at the port of S. in the province of West Florida, he paying freight for the same, and which, on the arrival of said brigantine at the port aforesaid, could not be found on board said brigantine, but was wholly lost), and also the sum of thirty-five pounds per centum upon said sum of one hundred and one pounds nine shillings and eightpence farthing, the said plaintiff first paying freight for the said trunk, and also that said defendants should pay the sum of eighty-nine pounds three shillings of like lawful, &c. being the costs taxed in that cause, besides the charges of the monition and other expences that might ensue to be paid

paid within fifteen days after the service of said monition, but that such monition should not be extracted within a week from the day and year last aforesaid, to wit, at Westminster aforesaid. *And whereas* said defendants, after the promulgation of said decree, to wit, on the thirteenth June, A. D. 1772, at Westminster aforesaid, appealed from the said decree to our lord the now king's most excellent majesty in council, to wit, at Westminster aforesaid, and such proceedings were had on said appeal, that afterwards, to wit, at the court of our said lord the now king, holden at his palace at St. James's, to wit, at Westminster aforesaid, before our said lord the now king, and divers peers and great men, and other liege subjects of our said lord the king, and of his most honourable privy council, on the thirty-first September, A. D. 1773, our said lord the king, by and with the advice of his privy council, ordered, that the said appeal should be dismissed for non-prosecution, with twenty pounds sterling costs, to wit, at Westminster aforesaid; whereof said defendants afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, had notice. *And whereas* said plaintiff also laid out and expended a large sum of money, to wit, the sum of pounds of like lawful, &c. in and about the charges of the monition and other expences in suing, and on account of the said cause, besides the sum of eighty-nine pounds three shillings for taxed costs, as aforesaid, which, together with the said sum of one hundred and one pounds nine shillings and eightpence farthing, of lawful, &c. (being the first cost of the said trunk of goods (allowing the said defendants the sum of for the freight thereof), and the said sum of twenty-five pounds per cent. upon the said sum of one hundred and one pounds nine shillings and eightpence farthing, and the said sum of eighty-nine pounds three shillings (being the costs taxed as aforesaid), and the said sum of twenty pounds (by our said lord the now king, by and with the advice of his privy council, as aforesaid, ordered for costs) made and amounted to a large sum of money, to wit, the sum of pounds of like lawful, &c. to wit, at Westminster aforesaid; and the said decree is still in full force and unsatisfied; of which said several premises the said defendants afterwards, to wit, on first January 1774, to wit, at Westminster, had notice; *and by means* of which said several premises, they the said defendants became liable to pay to said plaintiff said sum of pounds, when they should be thereunto afterwards requested; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, undertook, and faithfully promised said plaintiff, to pay him said last-mentioned sum of money, when they should be thereto afterwards requested. And whereas, &c. &c. (A Second Count, that defendants were indebted, &c. by a certain decree, &c. promulgated, &c. following the substance of this Count, and also in the further sum of pounds for charges of monition, &c. as above, making together in the whole the sum of, &c.; and being so indebted, &c. Third Count, only stating the decree generally. Common conclusion to the above three Counts. Fourth and fifth, Special assumpsit to convey a certain trunk.

Appeal to the king in council, and

appeal dismissed, with 20l. costs.

Plaintiff laid out other costs, &c. which, together with other sums, amount to l.

Decree still in force.

Defendants had notice; by means, &c. became liable; and being so, in consideration thereof, promised, &c.

Second Count.

Sixth,

Sixth and seventh, Goods bargained and sold, and sold and delivered. Eighth, Money laid out, &c. Ninth, Money lent, &c. Common conclusion to four last Counts.) C. RUNNINGTON.

ON LEGACIES.

Indebitatus assumpsit for a legacy.

MIDDLESEX, *ss.* William Laslett the elder, late of, &c. and Thomas Laslett late of the same place, were attached to answer unto William Laslett the younger, in a plea of trespass on the case, &c. and thereupon the said plaintiff, by William Johnston his attorney, complains, that whereas one William Laslett, deceased, in his lifetime, to wit, on the fifth day of April A. D. 1775, to wit, at Westminster aforesaid, in the said county of Middlesex, duly made his last will and testament in writing, bearing date the day and year aforesaid, and thereby, amongst other things, gave and bequeathed unto the said plaintiff (by the description of his grandson W. Laslett, son of Stephen Laslett) twenty pounds of lawful, &c. to be paid him by his executors as soon as he the said plaintiff should attain his age of twenty-four years; and the said William Laslett deceased did in and by his said last will and testament nominate, constitute, and appoint his sons the aforesaid defendants executors of the same; and after the making thereof, to wit, on the first day of April A. D. 1777, died, without altering or revoking his said will, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff in fact saith, that upon the death of the said William Laslett deceased, the said defendants took upon themselves the burthen of the execution of his aforesaid will, and afterwards, to wit, on the fourth day of April in the year 1777 aforesaid, duly proved the same, and assented to the aforesaid bequest to the said plaintiff, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff further saith, that before the exhibiting the bill of him the said plaintiff, to wit, on the first day of January A. D. 1782, he the said plaintiff attained his age of twenty-four years, whereof he the said defendant, on the same day and year, had notice, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff in fact further saith, that afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, the said defendants had goods and chattels which were of the said William Laslett deceased in their hands, to be administered, to a large amount, to wit, to an amount sufficient to pay and satisfy, and with which they could and might have paid and satisfied, the said sum of twenty pounds so given and bequeathed to the said plaintiff as aforesaid, over and besides the debts and funeral charges of the said William Laslett deceased, whereby the said defendants became liable to pay to the said plaintiff

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tiff the ſum of twenty pounds ſo given and bequeathed to him as aforeſaid: and being ſo liable, they the ſaid defendants, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, undertook, and faithfully promiſed the ſaid plaintiff, to pay him the ſaid ſum of twenty pounds ſo given and bequeathed to him as aforeſaid, when they ſhould be thereto afterwards requeſted. Money had and received, and common concluſion. [See Concluſions, &c.]

The general opinion ſeems againſt this action; but from what fell from the Court in determining the late caſe of (a) Hawkes and Saunders, and upon principles of law, I ſhould be inclined to think it maintainable, and that too againſt the defendants in their own right, ſuppoſing plaintiff can eſtabliſh the amount of aſſets. V. LAWES.

(a) Cowp. 289. But ſee Aſſumpſit for a Legacy, poſt.

SOMERSETSHIRE, ſſ. Nathaniel Atkins and Anne his wife complain of Charles Hill being, &c. for that whereas James Clarke, on the ſeventeenth day of November, A. D. 1780, at Taunton in the ſaid county, by his laſt will and teſtament, in writing, did (amongſt other things) give and bequeath to his daughter Anne (then and ſtill being the wife of the ſaid Nathaniel) the ſum of ſixty pounds, if ſhe the ſaid A. ſhould be living at the time of his (the ſaid James Clarke's) death, and of his laſt will and teſtament made the ſaid C. H. his ſole executor; and the ſaid James C. afterwards, to wit, on the fourteenth day of September, in the year of Our Lord 1781, at T. aforeſaid, died without altering or revoking his ſaid will, and the ſaid C. upon the death of the ſaid James, took upon himſelf the burthen of the execution of the ſaid will; and the ſaid N. and A. further ſay, that divers goods and chattels of the ſaid J. of great value, to wit, of the value of one hundred pounds, afterwards, to wit, on the ſame day and year laſt aforeſaid, at T. aforeſaid, came to the hands of the ſaid C. as executor of the ſaid James, which ſaid goods and chattels were more than ſufficient to pay and ſatisfy the juſt debts and legacies of the ſaid J. to wit, at T. aforeſaid, in the ſaid county, of which the ſaid C. then and there had notice; by reaſon of which ſaid premiſes, the ſaid C. became liable to pay to the ſaid N. and A. the ſaid ſum of ſixty pounds ſo deviſed by the ſaid J. as aforeſaid; and being ſo liable, he the ſaid C. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at T. aforeſaid, in the county aforeſaid, undertook, &c. (as uſual) to pay to them the ſaid ſum of ſixty pounds, whenever he the ſaid C. ſhould be thereunto afterwards requeſted (2d Count, for money had and received.). Neverthelesſ the ſaid C. his ſaid ſeveral promiſes and undertakings in manner and form aforeſaid made in no wiſe regarding, but contriving, &c. to deceive, &c. hath not paid to the ſaid N. and A. or either of them, the ſaid ſums of money, or any part thereof, (although to pay the ſame the ſaid C. hath

Aſſumpſit Legacy. See ante.

hath been by the said N. and A. often requested,) but to pay the same to the said A. and N. or either of them, he the said C. hath hitherto wholly refused, and still doth refuse, to the damage, &c. and therefore, &c.

Unless the plaintiffs can prove something more than is stated in the instructions, the event of this action will be extremely doubtful. Indeed I never knew an *action* brought for a legacy yet, unless there was an *express* promise by the *executor* to pay it; and unless *such* promise can be proved, or *it can be proved that the executor had sufficient assets to pay it, the action I think cannot be maintained*

F. BULLER.

A general demurrer to the foregoing declaration was argued 23d May in Easter Term 1775. The chief point made was on the form of the declaration, and on that alone it was decided in plaintiffs favour, for the declaration stated an assumpsit by the *executor* since the death of testator, (having assets at the same time,) therefore the assumpsit of the executor totally alters the nature of the case, and the jury alone must try the question, and that only, *whether the executor did undertake or not?* for if he did undertake, an action undoubtedly lies; but if, on the contrary, the jury find that he did not undertake, (*a*) *a verdict must be found for defendant.* Yet as the declaration is thus drawn, the Court cannot prevent the fact being tried by a jury; so instead of its being made a general question, whether a legacy is recoverable at law or not? the present demurrer goes to the substance of the declaration; for as an assumpsit by the *executor* was laid in the declaration, it was not necessary to decide the general question; for in the manner plaintiffs declared, the action was no otherwise than an action on the case on the common assumpsit. But Lord M. said, That though it was not necessary, and consequently he would decline mentioning his opinion on the general question, whether a legacy is recoverable at common law or not? yet he looked on the court of *K. B.* in this respect as having a concurrent jurisdiction with the court of *Chancery*, and that if the court of K. B. could not compel an *executor* to pay a legacy, the court of Chancery, for the very same reasons, could not. But as an assumpsit is alledged in the declaration, as made by *executor* subsequent to testator's death, there was no doubt but that plaintiffs would recover if they could prove such assumpsit and assets. See this case reported in Cowp. 284 with the present Mr. Justice Buller's (then Mr. Buller) able argument, and the judgment of the Court delivered very fully by Lord Mansfield: and see Hawkes and others v. Saunders, Cowp. 289. where Mr. Justice Buller delivered his own argument when a judge; and Rose v Bowl, 1 T. Rep C. B. 103. &c. But see Deeks v. Strutt, 5. Term Rep. 690. with Lord Kenyon's and Mr. Justice Grose's argument in giving judgment; so that at common law assumpsit will not lie for a legacy.

(*a*) Qu. where can be the ground for a doubt

Declaration for a share of a *legacy* left on the death of testator's wife and survivor of one of the legatees, against one *executor*, the other having renounced.

LONDON, to wit. William Harrison late of, &c. was attached to answer unto Thomas H. in, &c. and thereupon the said plaintiff, by A. B. his attorney, complains, that whereas one E. K. deceased, in his lifetime, to wit, on, &c. at, &c. July made and published his last will and testament in writing, bearing date the day and year (1) aforesaid, and thereby (amongst other things) gave and bequeathed unto *the said defendant, and one H. W. in the said will named, the sum of one thousand pounds upon the special trust and confidence that they the said defendant and H. W. or the survivor of them, or the executors or administrators of such survivor, should and did, as soon as conveniently could be after his decease, put and place the said sum of one thousand pounds out at interest upon good and sufficient security, and for the most interest that*

(1) last.

that could be legally gotten for the same, and the interest and produce arising therefrom, from time to time to pay to his dear wife E. K. for and during the term of her natural life, by two equal half-yearly payments in each year, the first payment to be made within six months next after his decease; and from and immediately after her decease, he the said testator gave and bequeathed the said sum of one thousand pounds to his nephews and nieces John Harrison the said defendant, M. W. the said plaintiff, S. the wife of J. S. E. H. T. H. S. H. E. H. C. H. L. H. and H. H. to be divided between them equally, share and share alike, as soon after his the said testator's wife's decease as might be; and in case any or either of his the said testator's nephews or nieces should happen to die in the lifetime of his said wife, then he gave the share of him, her, or them so dying unto the survivor of his said nephews and nieces in equal shares and proportions; also he the said testator gave and bequeathed by his said will, to his said nephews and nieces T. H. &c. the sum of one hundred pounds a piece, to be paid them respectively by his said executor therein after named, within six months next after his deceafe; and the said testator, in and by his said will, nominated and appointed the said defendant sole executor thereof; and after the making thereof, to wit, on, &c. died without altering or revoking his said will, *and leaving the said E. K. and the said several other legatees named in his said will with him surviving*, to wit, at, &c.: and the said plaintiff in fact saith, that upon the death of the said E. K. to wit, on, (2) &c. the said defendant took upon himself the execution of the said will of the said E. K. (3) and then and there assented to the several bequests so thereby made as aforesaid, *and afterwards duly proved the same as such executor thereof as aforesaid, to wit, at, &c. And the said plaintiff in fact further says, that after the death of the said E. K. and in the lifetime of his said late wife, the said E. K. to wit, on, &c. the said L. H. and S. the wife of J. S. two of the legatees in the said will of the said E. K. named, died, and that afterwards, and before the suing out of the original writ of the said plaintiff against the said defendant, to wit, on, &c. E. K. the widow of the said E. K. died, to wit, on, &c.* And the said plaintiff in fact further says, that six months from the death of the said E. K. (4) have long since elapsed, *and that the share and interest of him the said plaintiff of and in the said sum of one thousand pounds so bequeathed in and by the said will of the said E. K. as aforesaid, and thereby directed to be divided upon the death of the said E. K. as aforesaid, amounted to a large sum of money, to wit, the sum of one hundred and twenty five pounds of lawful money of Great Britain; of all which said several premises, he the said defendant afterwards, to wit, on, &c. had notice. And the said plaintiff in fact further says, that the said H. W. in the said will of the said E. K. named, hath wholly renounced, and always hitherto declined, acting or being concerned in the said trust so by the said will reposed in him the said H. W. and the said defendant as to the aforesaid bequest or legacy of one thousand pounds, and hath not yet received the*

(2) lastly above mentioned.

(3) and the administration of his goods and chattels, as such executor of his said will.

(4) last mentioned.

the same, or any part thereof, or any money on account thereof. But the said plaintiff in fact further says, (5) that afterwards, and *just* before the suing forth the original writ of the said plaintiff against the said defendant, to wit, on, &c. the said defendant had received, and then and there had in his hands *and possession*, goods and chattels which were of the said E. K. deceased at the time of his death to be administered, to a large amount, to wit, to an amount sufficient to pay and satisfy, and with which he could and might have then and there paid and satisfied, the said several legacies *herein before mentioned, and all other legacies* (6) given and bequeathed (7) *by the said will of the said E. K. and thereby directed to be paid* over and besides the debts and funeral charges of the said E. K. whereby the said defendant then and there became liable to pay to the said plaintiff the said legacy of one hundred pounds, *and also his said share of the said sum of one thousand pounds* so (8) given and bequeathed *to him the said plaintiff by the said will of the said E. K.* as (9) aforesaid, *amounting in the whole to a large sum of money, to wit, the sum of two hundred and twenty-five pounds of, &c.*; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. undertook, and faithfully promised the said plaintiff, to pay him the said last-mentioned sum of money, when he the said defendant should be thereto afterwards requested. And whereas, &c. &c. (same as the first, omitting the parts in italic, and inserting what is in the margin; common Counts, and account stated, and common conclusion.)

(5) and

(6) so

(7) as last mentioned.

(8) to him

(9) last.

2d Count.

V. LAWES.

Declaration against an executor for a *legacy* payable to plaintiff when he attained 21.

CHESHIRE, to wit. T. C. complains of P. C. executor of the last will and testament of P. C. deceased, being, &c. for that whereas one P. C. since deceased, in his lifetime, to wit, on the seventh of July 1776, at M. in the said county of C. made his last will and testament in writing, and did thereby (amongst other things) give and bequeath unto the said T. the sum of pounds, to be paid to him by his executors when he the said T. should attain the age of twenty-one years, and of his said last will and testament made the said P. C. executor as aforesaid; and the said P. C. the testator afterwards, to wit, on the same day and year aforesaid, at, &c. died without altering or revoking his said will; and the said P. C. the defendant, after the death of P. C. deceased, afterwards, to wit, on, &c. at, &c. duly proved the said will and took upon himself the burthen of the execution thereof. And the said T. further says, that divers goods and chattels of the said P. C. deceased, of great value, to wit, of the value of five thousand pounds and upwards, afterwards, to wit, on the same day and year aforesaid, at, &c. came to the hands of the said P. C. the defendant, executor of the last will and testament of the said P. C. deceased, which said goods and chattels were more than sufficient to satisfy and pay all the funeral expences, just debts and legacies

of

of the said P. C. deceased. And the said T. further says, that he the said Thomas afterwards, and before the exhibiting the bill of the said T. to wit, on the first of January 1757, attained the age of twenty-one years, to wit, at, &c. of all which said premises he the said P. C. the defendant, executor as aforesaid, then and there had notice; by reason whereof the said P. C. the defendant, executor as aforesaid, became liable to pay to the said T. the said sum of five pounds so bequeathed to him as aforesaid, by the said R. C, deceased as aforesaid; and being so liable he the said defendant, executor as aforesaid, in consideration thereof afterwards, to wit, on, &c, at, &c. Assumpsit to pay the said five pounds whenever afterwards he the said defendant should be thereto requested. Money paid, &c. lent, &c. had, &c. and breach to the whole.

Drawn by MR. GRAHAM.

Vide Atkins and Wife v. Hill, Cowp. 284, and Hawkes and Wife v. Saunders, Cowp. 289.

FOR TITHES.

A Count for the use and occupation of *tithes*, at the suit of executrix of a vicar. [See Executors, &c.]

AND whereas the said defendant afterwards, &c. was indebted to the said J. L. in his lifetime in (*a*) *other* ninety pounds, for the use and occupation of divers *other* tithes of corn, grass, and hay, and *other* great and small tithes of the said J. L. in his lifetime growing, arising, renewing, and springing on and coming off divers other lands and tenements, situate, lying, and being in the parish aforesaid, by the said defendant, and at his request, for a long time, to wit, for the space of one year before then elapsed, had, possessed, used, occupied, and enjoyed, by and under the said J. L. in his lifetime and by his permission; and being so indebted, &c.

Quantum meruit.

(*b*) And whereas, in consideration that the said J. L. in his lifetime, at the like special instance, &c. of the said defendant, had before that time permitted the said defendant to have, collect, take, and carry away to his own use, certain other great and small tithes arising, springing on, and coming off certain *other* lands and tenements, situate, lying, and being in the said parish of B. for the space of one year then elapsed, and that the said defendant had accordingly had, received, taken, and carried away to his own use the said last mentioned tithes, and which said last mentioned tithes were payable to the said J. L. in his lifetime, as one of the vicars of the said vicarage of B. &c. he the said defendant undertook, &c. to pay him so much money in one year, &c.; and the said plaintiff avers that, &c. [Go on; and see forms of the beginnings and conclusions to Declarations postea.]

(*a*) 1st Count. Omit the word *other* throughout. See Proceedings by and against Clergymen.

(*b*) 2d Count. Here retain the word *other* throughout.

On a composition for tithes.

THOMAS BUND, clerk, complains of Mark Frost, being in the custody of the marshal of the marshalsea of our lord the king, before the king himself, for that whereas the said Thomas on the first day of April, in the year of Our Lord 1766, and long before, was, and from thence hitherto hath been and still is vicar of the vicarage of the parish of Woking in the county of Surrey aforesaid, and as such, during all the time aforesaid, was and still is instituted to all the small tithes, growing, arising, renewing on and coming off and from a certain messuage and divers, to wit, twenty acres of land, with the appurtenances, situate, lying, and being in the parish of Woking aforesaid, in the county aforesaid, and within the bounds, limits, and tithable places of the said parish, which said messuage and land, during all that time aforesaid, have been and still are in the possession and occupation of the said Mark; and whereas the said Mark, on the fifth day of April in the year of Our Lord 1773, at the parish aforesaid, was indebted to the said Thomas in the sum of twenty pounds, for certain small tithes, arising and growing on and coming off and from the said messuage and land with the appurtenances, before that time sold by the said Thomas to the said Mark at his special instance and request, and by the said Mark, before that time, had and retained to his own use by virtue of a certain agreement or composition for the said small tithes before then made by and between the said Thomas and the said Mark in that behalf, and which said small tithes were payable to the said Thomas so as aforesaid being such vicar of the vicarage aforesaid from the said Mark as occupier and possessor of the said messuage and land with the appurtenances; and being so indebted, the said Mark in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, undertook, and then and there faithfully promised the said Thomas, to pay him the said sum of money when he should be thereto afterwards requested.

Quantum meruit.

And whereas the said Mark, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in consideration that the said Thomas so being vicar of the said vicarage, and the said Mark so being occupier and possessor of the said messuage and land with the appurtenances, had before that time permitted the said Mark, at his like special instance and request, to take and receive to his own use certain other small tithes, growing and arising on, and coming off and from the said messuage and land, and which were due and payable to the said Thomas as such vicar of the said vicarage, from the said Mark as being such occupier and possessor of the said messuage and land with the appurtenances thereof, and that the said Mark had by virtue of that last mentioned permission of the said Thomas, before that time, taken and received to his own use the said last mentioned small tithes, undertook, and then and there faithfully promised the said Thomas to pay him so much money as he therefore reasonably deserved to have; and the said Thomas avers that he therefore reasonably deserved to have of the said Mark other twenty pounds, to wit, at the parish aforesaid, whereof the said Mark then and there had notice;

notice: yet the said Mark, not regarding his aforesaid several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this behalf, hath not yet paid the said several sums of money, or any part thereof, to the said Thomas, (although so to do the said Mark by the said Thomas, afterwards, to wit, on the same day and year last aforesaid, then afterwards at the parish aforesaid, was requested,) but he to do this hath hitherto wholly refused, and still refuses to the said Thomas, to his damage of twenty pounds; and therefore he brings his suit.

Declaration by the impropriator of a rectory against a tenant within the parish, on a composition for tithes by paying a yearly sum for the several acres of land.

MIDDLESEX, to wit. Mary Silvester complains of J. M. &c. for this, to wit, that whereas the said M. on the first of May 1754, and long before, and coutinually from thence until the exhibiting the bill of the said Mary, was, and yet is, lawfully possessed of the rectory impropriate of the parish of W. in the said county of Middlesex, for a certain term, to wit, for the residue of a certain term of twenty-one years then and yet to come and unexpired: And whereas the said John now is, and for all the time aforesaid was occupier and possessor of divers lands and tenements, that is, forty acres of arable land, forty acres of meadow land, and forty acres of pasture, lying and being within the parish of W. aforesaid, and within the bounds, limits, and tithable places of the said parish: And whereas the said M. so being possessed of the said rectory impropriate as aforesaid, on the day and year first mentioned, and during the whole time aforesaid, was lawfully entitled to have, take, and receive all the tithes of corn, grain, and hay, and other tithes which should annually arise or grow upon the lands and tenements aforesaid, and also the other tithes payable to the said Mary, as possessor of said rectory, for and on account of the lands and tenements aforesaid, during such time as the said Mary should continue so possessed of the said rectory impropriate aforesaid; and the said John, so being occupier and possessor of the lands and tenements aforesaid, he the said J. on the day and year first above mentioned, at W. aforesaid, in said county of Middlesex, in consideration that the said M. at the special instance and request of the said J. would permit and suffer the said John to have and retain to his own use all the tithes of corn, grain, and hay, and other tithes, which should annually arise and grow upon the lands and tenements aforesaid, and also the other tithes payable to the said Mary, as possessor of the said rectory, for and on account of the lands and tenements aforesaid, which should be payable by the said J. to the said M. so long as the said Mary and John should be severally possessed of the said rectory and lands and tenements aforesaid, undertook, and to the said Mary then and there faithfully promised, that he the said John would pay to the said Mary yearly, and every year, for such time as he should so have and retain the tithes aforesaid, at and after the rate of six shillings for and in respect of every acre

of the said land which should be sown with wheat, and at and after the rate of four shillings for and in respect of every acre of the said land which should be sown with any other kind of corn or tares, and at and after the rate of two shillings and sixpence for and in respect of every acre of the said land which should be in grass; and the said Mary doth aver that she the said Mary, afterwards, at the special instance and request of the said John, did permit and suffer the said John to have, retain, and enjoy, all the tithes of corn, grain, and hay, which grew and arose upon the lands and tenements, and also the other tithes, which were payable by the said John to the said Mary, as possessor of the said rectory, and also for and on account of the said lands and tenements for a long space of time, to wit, the space of two years, and that during that time a great quantity, that is, eighty acres of the said land, was sown with wheat, and a great quantity, that is, eighty acres of said land, was sown with corn and tares, and another large quantity of said land, to wit, other eighty acres thereof was in grass, whereby the said John became liable, and according to his said promise and undertaking, so made as aforesaid, ought to have paid to the said Mary a large sum of money, that is, fifty pounds, and another large sum of money, that is, twenty pounds, was also due and payable by the said J. to the said M. for other tithes, for and on account of the said lands and tenements, according to the said promise and undertaking of the said J. so made to the said M. as aforesaid: And whereas also said Mary on the first of May 1756, and for a long time, to wit, for the space of two years then last past, was lawfully possessed of the rectory impropriate of another parish of W. in the county aforesaid; and whereas the said J. for all the time last aforesaid, was occupier and possessor of divers other lands and tenements, to wit, forty acres of other, &c. &c. with the appurtenances, lying and being within the said last mentioned parish of W. and the said J. on the same day and year last mentioned, at W. aforesaid, was indebted to the said Mary in the further sum of pounds, for the tithes of wheat and other corn, tares and hay, before that time for a long time, to wit, for two years, coming, growing, and arising on the said last mentioned lands, and also for other tithes, during that time, within the said last mentioned parish, arising and belonging to the said Mary, as possessor of the said last mentioned rectory, and which the said Mary had permitted and suffered the said John, at his special instance and request, to have and retain to his own use, and being so indebted, &c.: And whereas also the said Mary, on the first of May 1756, and for a long time, to wit, for two years then last past, was lawfully possessed of the rectory impropriate of another parish of W. in the county aforesaid; and whereas the said John, for all the time last aforesaid, was occupier and possessor of divers other lands and tenements, to wit, forty acres of other arable land, &c. with the appurtenances, lying and being within the last mentioned parish of W.; and the said J. on the same day and year last aforesaid,

Quantum meruit.

in

in consideration that the said M. at the like special instance and request of the said J. had permitted and suffered the said J. to have and retain the tithes of wheat and other corn, tares and hay, before that time for a long time, to wit, for two years, growing, coming, and arising on the said last-mentioned lands; and also had permitted and suffered the said J. at his like special instance and request, to have and retain other things during that time within the said last-mentioned parish, arising and belonging to the said Mary, as possessor of the said last-mentioned rectory, and payable by the said J. to the said M. as the possessor of the said last-mentioned rectory, undertook, &c. [Quantum meruit. Breach.]

G. WINN.

FOR TOLLS.

Indebitatus assumpsit for tolls of Newgate Market, at the suit of the lord mayor, &c. of London.

LONDON, *ss.* The mayor and commonalty and citizens of the city of London complain of defendant being, &c. for that whereas, on the eighth day of April 1758, and long before, and continually from thenceforth hitherto, there hath been, and still is, a certain public market and market-place, with the appurtenances, called Newgate Market, lying and being in London aforesaid, part thereof in the parish of St. Faith the Virgin, and the other part thereof in the parish of Christ Church; and in the said market-place, during all the time aforesaid, there hath been, and still is, a certain public market, held every day, except on Sundays, for the buying, selling, and exposing to sale victuals or provisions brought thither, or caused to be brought thither, by any person or persons, for selling or exposing the same to sale there; and whereas also the mayor, &c. for all the time aforesaid, have been, and still are, proprietors and owners of all the rates and tolls of and belonging to the said market, and as such during all the time aforesaid were, and yet are, entitled to receive and have of and from all and every person or persons, during all the time aforesaid, *pitching* and exposing to sale victuals and provisions there, the rates and tolls following, that is to say, the sum of sixpence per day for every pack of victuals or provisions *pitched* and exposed to sale in the said market and market-place, for each and every day that the same hath been exposed to sale there: and the sum of twopence a day for every bundle of victuals *pitched* and exposed to sale in the said market or market-place, for each and every day that the same hath been so *pitched* and exposed to sale there; and the sum of one penny a day for each and every ped, basket, or hamper of provisions, *pitched* and exposed to sale in the said market or market-place, for each and every day that the same hath been so exposed to sale there in the said market or market-place: and the said mayor, &c. being so entitled to have and receive the said rates and tolls as aforesaid, while they the said

mayor,

mayor, &c. were so entitled to have and receive the same, to wit, on the sixth day of April, A. D. 1758, aforesaid, and on divers other days and times between that day and the twenty-eighth January, A. D. 1759, at L. aforesaid, he the said defendant did *pitch* and expose to sale, and caused to be *pitched* and exposed to sale, in the said market and market-place, divers packs of victuals and provisions, and divers bundles of victuals and provisions, to wit, one thousand bundles of victuals and provisions, and divers peds, baskets, and hampers of victuals and provisions, to wit, one thousand, &c.; by reason whereof he the said defendant became indebted to the said mayor, &c. in the sum of forty-five pounds six shillings and eightpence, being at and after the rate of sixpence for every pack, twopence for every bundle, and one penny for every ped, basket, and hamper of said one thousand packs, one thousand bundles, one thousand peds, one thousand baskets, and one thousand hampers of victuals and provisions so by him the said defendant *pitched* and exposed to sale in the said market and market-place: and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said mayor, &c. to pay them the said sum of money when he should be thereto afterwards requested: and whereas, &c. (Add a second Count like the first, exposing to sale only, without *pitching*.) Money had and received. Common conclusion. [See Burr. 1402. 1407. 2. Wils. 95. 1. T. Rep. 618. See Proceedings by Corporations.]

Declaration in C. P. for *tolls*, lock *fees*, duties, &c. due on the River Aire, in Yorkshire.

YORKSHIRE, *ss.* James Fenton, late of the parish of Leeds, in the said county, coal-merchant, was attached to answer unto John Burton, esquire, George Dawer, John Douglass, and Joseph Atkinson, in a plea of trespass on the case, &c.; and thereupon the said plaintiffs, by A. B. their attorney, complain, that whereas the River Aire, in the county of York, on the second day of November, 1757, and long before, was, and from thence hitherto hath been, navigable and passable for barges, boats, lighters, and other vessels from the town of Leeds, in the said county of York, down to a certain place called Knottingley, in the same county, and situate upon the same river, and beyond that place down to a certain other place called Wheeland, situate upon the said river: and whereas the said plaintiffs, for all the time aforesaid, have been, and still are, proprietors or farmers of the rates or tolls hereafter mentioned, and lawfully entitled to ask, demand, receive, and take from all and every person and persons, during the time aforesaid, sending down coals, corn, or glass bottles, during that time carried or conveyed down the said river in any boat, barge, or vessel, from the said town of Leeds to the said place called Wheeland, or from the said town of Leeds to the said place called Knottingley, the rates and tolls hereafter mentioned, that is to say, for every ton of coals carried and conveyed down the said river, in any boat, barge, or vessel, from the said

said town called L. to the said place called W. the rate or toll of three shillings; for every ton of coals carried or conveyed down the said river, in any boat, barge, or vessel, from L. aforesaid to K. aforesaid, the rate or toll of two shillings and twopence (*a*); and for every ton of glass-bottles carried and conveyed down in any boat, barge, or vessel, down the said river, from L. aforesaid to W. aforesaid, the rate or toll of nine shillings and sixpence; and for every ton of glass-bottles carried or conveyed down from L. aforesaid to K. aforesaid, the rate or toll of six shillings and fourpence; for every quarter of corn carried or conveyed down the said river, in any boat, barge, or vessel from L. aforesaid to W. aforesaid, the rate or toll of sixpence; and for every quarter of corn carried or conveyed down the said river in any boat, barge, or vessel, from L. aforesaid to K. aforesaid, the rate or toll of fourpence: and whereas, during the time aforesaid, and whilst the said plaintiffs were so entitled to the rates and tolls aforesaid, that is to say, on the second day of November, A. D. 1737, and on divers other days and times between that day and the first January 1739, he the said defendant did send down divers tons of coals, to wit, five thousand tons of coals, and a great quantity of glass-bottles, that is to say, one hundred tons of glass-bottles, and a great quantity of corn, to wit, one hundred quarters of corn; which said coals, glass-bottles, and corn, so sent down the said river by the said defendant, were carried and conveyed in certain boats, barges, and vessels, down the said river, from the said town of L. aforesaid to K. aforesaid; and that during the time last-mentioned the said defendant did send down, &c. (the same quantity as before, only from the town of L. to W. aforesaid); and by reason of the premises the said defendant became liable to pay to the said plaintiffs a large sum of money for the rates and tolls aforesaid, for the said coals, glass-bottles, and corn respectively sent, carried, and conveyed, down the river as aforesaid, during the time aforesaid, that is to say, the sum of one thousand and thirty-seven pounds (*b*), to wit, at L. aforesaid, in the said county of York; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. aforesaid, undertook, &c.: and whereas the said defendant afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, was indebted to the said plaintiffs in five hundred pounds for the rates and tolls of divers other goods, wares, and merchandizes, by the said defendant before that time sent, carried, and conveyed down the said river in the said boats or vessels, from the said town of L. aforesaid to W. aforesaid, and of divers other goods, &c. by the said defendant before that time sent, carried, and conveyed down the said river, in certain boats or vessels, from the said town of L. to K. aforesaid, before that time of right due and payable from the said defendant to the said plaintiffs; and

(*a*) It is necessary to be correct in the sums alledged to be due. *Qu.* If there is no variation in these tolls in the winter season, because the Act makes a difference?

(*b*) Be exact in the computation of what the whole of the several quantities of goods alledged to be carried amount to.

being

Count on a note for lock fees, &c.

being so indebted, &c.: and whereas the said plaintiffs, at the time of the making of the promissory note hereafter mentioned, were partners in and jointly entitled to have, receive, and take, certain rates, tolls, or dues, called lock dues, from any person or persons sending coals, or other goods or merchandizes which had been carried or conveyed down the said River Aire, in any boat or vessel, to K. aforesaid: and whereas the said defendant, on the seventeenth day of August, A. D. , at, &c. aforesaid, made and signed his said note in writing, commonly called a promissory note, and then and there delivered the same to the said plaintiffs, and thereby promised to pay to the said plaintiffs, &c. &c. for value received by lock dues of coals, &c. charged at K. to the first July then last past: by reason whereof, &c. (go on with common conclusion). [For which see beginnings and endings of Declarations].

Ed. Bootle.

For toll on wool bought at a market.

WHEREAS on the seventeenth day of September, A. D. 1780, and long before, and continually since hitherto, there hath been, and still is, a public market and market-place, with the appurtenances, called N. Market, lying and being at N. in the county of Hants, aforesaid, and held on every Tuesday and Friday in every week during all the time aforesaid, for buying, selling, and exposing to sale of wool brought to the said market: and whereas the said plaintiff, on the said seventeenth day of September, A. D. 1780, aforesaid, and from thence until the fourth day of October, A. D. 1781, aforesaid, was proprietor and farmer of the rates and tolls paid and payable in such market, and entitled to take of all and every person and persons, during the time aforesaid, buying wool in the said market or market-place, the rate or toll following that is to say, sevenpence for every pack of wool that have or hath been so bought in the said market or market-place by such buyer or buyers respectively: and whereas the said plaintiff, so being the proprietor and farmer of the rates and tolls aforesaid, and being so entitled to take of such buyer or buyers of wool in the said market or market-place such rate or toll as aforesaid, he the said defendant, whilst the said plaintiff was such proprietor, &c. and entitled to take such rates and tolls, to wit, on the seventeenth day of September, A. D. 1780. at and in the said market or market-place, at Newport aforesaid, did buy certain wool, to wit, one hundred packs of wool, which had been and were on the day and year last aforesaid exposed to sale in the said market and market-place: by reason whereof he the said defendant became and was indebted and liable to pay to the said plaintiff the sum of, &c.; and being so indebted, &c. (Go on, and see beginnings and endings of Declarations).

For toll due to a corporation for passing over a bridge with loaded carriages.

WHEREAS the borough of S. is an antient borough: and whereas the burghers of the said borough, from time whereof the memory of man is not to the contrary, hath been a body politic and corporate, in fact and in name, nevertheless, at divers times, by

various

various names of incorporation, until the seventh day of September, in the year of the reign of George the First, by the name of the burgesses of S. in the county of D.; and on the, &c. by the name of the bailiffs, burgesses, and community of the borough of S. in the county of D.; and then afterwards, to wit, on, &c. and from thence hitherto by the name of the bailiffs, burgesses, and community of the borough of S. in the county of D.: and the said bailiffs, &c further say, that from time whereof, &c. there hath been, and still is, within the said borough, a certain antient bridge, called L. Bridge, over and across a certain antient navigable river, called O. River, running through the said borough; and that the said bailiffs, &c. and all their predecessors, by such their several names of incorporation as aforesaid, have from time to time, and for all the time whereof, &c. repaired, maintained, and supported, and have been used and accustomed to repair, maintain, and support the said bridge with all necessary repairs and amendments, and by reason thereof, the said bailiffs, &c. and their predecessors, by such their several names of incorporation as aforesaid, have, for all such time as aforesaid, had and received, and have been used and accustomed to have and receive, and still of right ought to have and receive, by their ministers and servants, of every person (not being a burgess or freeman of the said borough) a certain duty or toll for every loaded waggon or loaded cart passing over the said bridge: and the said bailiffs, &c. by their attorney aforesaid, further say, that the said defendant was not on, &c. or at any time before or since, nor is now, a burgess or freeman of the said borough of S. but a foreigner to the liberties and freedom thereof; and that a certain loaded waggon of the said defendant on the said, &c and on divers other days and times between that day and the fourteenth day of July, that is to say, at ninety-nine other times, passed and was driven over the said bridge; by means whereof the said defendant became indebted to the said bailiffs &c. in the sum of forty pounds of lawful, &c. (being at and after the rate of threepence for each and every time that the said loaded waggon of the said defendant had passed and was driven over the said bridge during the time aforesaid); and being so indebted, &c. Second Count like the first, only for a certain *loaded cart*. Third Count, And whereas the said defendant afterwards, to wit, on, &c. at, &c. was indebted, &c. for divers duties and tolls due and payable by the said defendant to the said bailiffs, &c for the passage of divers loaded waggons and loaded carts of the said defendant, before that time passed and drawn over the said bridge, which said bridge the said bailiffs, &c. and their predecessors, by their said several names of incorporation, from time whereof, &c. have from time to time repaired and supported, and have been used and accustomed to repair and support; and being so indebted, &c. Fourth Count, Indebitatus assumpsit for certain *antient dues and tolls* before that time due and payable by and from the said defendant to the said bailiffs, &c *for the passage* of, &c. (as before). Fifth Count, Indebitatus assumpsit for *a certain antient toll* before that time due and payable, &c. for the passage of, &c. before

For the passage &c.

before that time passed and drawn over the said bridge, at and after the rate of threepence for each and every of such loaded waggon, &c. so passing and being drawn over the said bridge, in consideration and by reason that the said bailiffs, &c. and other their predecessors, by such names of incorporation as aforesaid, have from time to time, during all such time as aforesaid, repaired and supported, and been used and accustomed to repair and support the said bridge, with all necessary reparations and amendments; and being so indebted, &c. [See beginnings and endings to Declarations. See also Proceedings by and against Corporations.]

3. Burr. 1403, 7. a declaration at the suit of the corporation of Yarmouth for *port duties*. See General Index, and Index to General Indebitatus Assumpsit.

Declaration for tolls passing over the bridge of A. stating the manor an antient manor in the crown, in right of the Dutchy of Lancaster, and lease from king William 3d. to A. B. for 99 years. Assignment of the said lease from A. B to C. D. under lease from C. D. to E. F. and G. C. D. died. Further lease from C. D's executors to E. F. and G. G. E. dies, leaving O. P. & the plaintiff executors. O. P. dies, leaving plaintiff executor and the interest of the lease. Various carriage tolls claimed.

YORKSHIRE, to wit. The right honourable Thomas lord Pelham complains of J. Pickersgill being, &c. for that whereas the manor of B. in the county of Y. is a manor of the antient demesne of the crown of England, as by the record of the book of Doomsday appears, and whereas the said manor was the inheritance and parcel of the possessions of the crown of England and of the dutchy of Lancaster respectively at divers periods for a long time, to wit, until the reign of Edward sixth, late king of England, &c. and afterwards: and whereas all and singular the kings and queens of this realm in right of the said crown of England and dutchy of Lancaster respectively for the time being, from time whereof the memory of man is not known to the contrary, have in respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and had been used and accustomed to have, take, and receive, and of right ought to have had, taken, and received, and still of right ought to have, take, and receive at the bridge of the borough, otherwise Boroughbridge, within the said manor, a certain reasonable toll, that is to say, a toll of fourpence for every wayne or waggon loaden coming, going, or passing that way over the said manor, payable and paid during all the time aforesaid by the proprietor or proprietors of such wayne or waggon loaden so coming, going, or passing over the said manor as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon loaden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll. And whereas the office of receiving the said toll within the said manor by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Boroughbridge, in the county of York, and which said bailiwick, and the said tolls long before the making the grant and demise hereafter mentioned, had been annexed to,

and

and then were parcel of the possessions of the antient dutchy of Lancaster. And whereas William the third, late king of England, &c. on the nineteenth of April 1697, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee in right of the said dutchy of Lancaster, and being so seised, the late king William the third, by his indenture of lease then made and sealed with his seal of his said then majesty's said dutchy of Lancaster, bearing date the same day and year last above mentioned, and duly inrolled (one part of which said indenture sealed with the seal of his said majesty's said dutchy of Lancaster, the said lord Pelham now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration therein mentioned, by and with the advice and consent of his chancellor and the council of his said dutchy of Lancaster, did grant, demise, set, and to farm let unto Robert H. knight, (among other things) all that the said bailiwick of the borough of Boroughbridge, in the said county of York, together with the said several and respective tolls there and which are therein described to be parcel of the possessions of his said majesty's dutchy of Lancaster, to hold the same unto the said sir Robert Howard, his executors, administrators and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine queen dowager of England from thence next ensuing, and fully to be compleat and ended; by virtue of which said demise he the said sir R. H. became intitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the said term thereby granted; and being so entitled he the said sir R. H. by his indenture of assignment, sealed with his own seal, and made on the seventeenth day of June 1697, at Boroughbridge aforesaid, between him the said sir R. H. of the one part, B. B. of, &c. esquire, of the other part, (one part of which said indenture, sealed with the seal of the said sir R. the said lord Pelham now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration of pounds to him paid by the said B. B. did bargain, sell, assign, transfer, and set over unto the said B. B. his executors, administrators and assigns, all the interest, estate, and term of ninety-nine years, in as large, ample, and beneficial a manner and form to all intents and purposes, as he the said sir R. H. his executors or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became intitled to the reversion expectant on the demise of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord Pelham saith, that after the making of the said indenture of assignment, (that is to say) on the twentieth day of December

Lease from K. Wm. 3. to sir R. H. for 99 years.

Assignment of the said lease by sir R. H. to B. B.

December 1705, the said Catherine queen dowager of England died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for the residue of the said term of ninety-nine years; and being so possessed, the said B. B. by a certain indenture of lease made on the twenty-second of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year 1727, at Boroughbridge aforesaid, between him the said B. B. by his name and addition of B. B of, &c. in the county of Rutland, esquire, of the one part, and the most noble Thomas Holles, D. of N. one of his then majesty's principal secretaries of state, and knight of the most noble order of the garter, and the right honourable Henry Pelham, esquire, his then majesty's secretary at war, and one of the lords of his then majesty's most honourable privy council, only brother of the said duke, of the other part (one part of which said indenture sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of Newcastle, and H. P. their executors, administrators and assigns (among other things) all that the said bailiwick of the borough of Boroughbridge in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging, to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from, &c. for and during and unto the full end and term of years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, and assigns, the yearly rent or sum of pounds, at certain times therein mentioned; by virtue of which said last-mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety-nine years belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son, W. B. all and singular his the said B. B.'s lease for seven years, goods and chattels, and personal estate whatsoever, and did thereby constitute and appoint the said W. B. sole executor of the said will: and the said B. B. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life, without revoking or altering the same, so possessed and entitled as aforesaid: and the said W. B. after the death of the said B. B. (that is to say) on the tenth day of June 1728, to wit, at Boroughbridge aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of York, being the

Underlease from B. B. to the duke of N. and H. P.

B. B. dies.

the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. on the day and year last abovesaid, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh day of July, in the third year of the reign of his late majesty king George the second, and in the year 1729, at Boroughbridge aforesaid, between him the said W. B. by his name and addition of W. B. &c. esquire, of the one part, and the said T. H. duke of N. and H. P. of the other part (one part of which said indenture, sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year last aforesaid) for the consideration therein mentioned, did grant, lease, set, and to farm let unto the said T. H. duke of N. and H. P. esquire, their executors, administrators, and assigns, (among other things) all that the said bailiwick of the borough of Boroughbridge, in the county of York, together with the said tolls there, and all and singular their rights, members, and appurtenances; to hold the same unto the said T. H. duke of Newcastle, and H. P. their executors, administrators, and assigns, from the determination of the said term of seven years, for and during and unto the full end and term of seventy years eight months and twenty days from thence next ensuing, and fully to be compleated and ended; yielding and paying therefore unto the said W. B. his executors, administrators, and assigns, the yearly rent of pounds, at certain times thereinmentioned; by virtue of which said last-mentioned indenture of lease they the said T. H. duke of Newcastle, and H. P. became and were intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the determination of the said term of seven years. And they the said T. H. duke of N. and H. P. being so possessed and intitled as aforesaid, the said H. P. afterwards, and after the expiration of the said term of seven years, to wit, on the sixth of March 1754, at Boroughbridge aforesaid, died, the said T. H. duke of N. him surviving; and thereupon the said T. H. duke of N. became solely possessed and entitled of in and to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the 29th of February 1768, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed Henrietta dutchess of N. by the description, name, and title of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did, of that his will, nominate, constitute, and appoint his said dear wife, and the right honourable T. H. (now the said plaintiff, lord Pelham) executors; and the said T. H. duke of N. after the making and publishing of his said will, to

Further [illegible] from B. B.'s executors to the said duke and H. P.

H. P. dies, the duke surviving.

 wit,

The duke dies, leaving the dutchess of N. and plaintiff executors.

wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and entitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and entered into, and became and were possessed of the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed, the said Henrietta dutchess of N. afterwards, to wit, on the seventh day of October 1772, at Boroughbridge, aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend Thomas lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said Thomas lord P. sole executor of that her will; and the said H. duchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life, without revoking or altering the same: and the said lord, after the said H. dutchess of N. (that is to say) on the twenty-second day of July 1776, to wit, at Boroughbridge aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof, by virtue of which said premises the said lord P became, and was, and still is possessed of the said bailiwick of the borough of Boroughbridge, in the county of Y. and the said toll there, and all and singular the rights, members, and appurtenances thereto belonging, for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first day of January 1780, and on divers other days and times between that time and the first day of May 1785, came, went, or passed with his wayne or waggon loaden divers, to wit, twelve hundred times by and at the south end of the said bridge of the borough, otherwise Boroughbridge, over the said manor, the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said manor as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, undertook, and then

The dutchess dies, leaving the plaintiff executor, and the interest of the lease.

and

and there faithfully promised the said lord P. to pay him the said sum of money when he the said J. P. should be thereto requested: And whereas the manor of B. is a manor of the ancient demesne of the crown of England, as by the record of the book of Doomesday appears; and whereas the said manor was the inheritance and part of the possessions of the crown of England and of Lancaster respectively, at divers periods, for a long time, to wit, until the reign of Edward the sixth, late king of England, &c. and afterwards; and whereas the town of Burghbridge, otherwise Burrowbridge, now is, and from time whereof the memory of man is not to the contrary, hath been within and parcel of the same manor; and whereas all and singular the kings and queens of this realm in right of his said crown of England and dutchy of Lancaster respectively for the time being, from the time whereof the memory, &c. in respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and have been used and accustomed to have, take, and receive, and of right ought to have had, taken, and received, and still of right ought to have, take, and receive at the bridge of Burrowbridge, within the said town, a certain reasonable toll, that is to say, a toll of four-pence for every wayne or waggon loaden, coming, going, or passing that way over the said town, payable and paid during all the time aforesaid by the proprietor or proprietors of such wayne or waggon load so going, or passing over the said town as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon loaden over the said town, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said town by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Boroughbridge in the county of York, and which said bailiwick and the said tolls, long before the making the grant and demise hereafter next mentioned, had been annexed to, and then were parcel of the possessions of the ancient dutchy of Lancaster; and whereas William the third, late king of England, &c. on the nineteenth day of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his dutchy of Lancaster; and being so seised, the said late king William the third by his indenture of lease then made, and sealed with the seal of his said then majesty's said dutchy of L. bearing date the same day and year last above mentioned, and duly enrolled (one part of which said indenture, sealed with the seal of his said majesty's dutchy of Lancaster, the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, by and with the advice and consent of his said chancellor and council of his said

2d Count, Claiming [illegible] every wag[illegible] passing over the town.

 dutchy

dutchy of L. did grant, demise, set, and to farm let unto R. H. knight, (among other things), all that the said bailiwick of the borough of Boroughbridge, in the said county of York, together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his said majesty's ancient dutchy of L. to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine then queen dowager of England, from thence next ensuing to be fully compleat and ended; by virtue of which said demise, he the said sir R. H. became intitled to the reversion expectant upon the decease of the said queen, of and in the said bailiwick and tolls, and all the rights, privileges, powers, and authorities thereunto belonging for and during the said term thereby granted. And being so intitled, the said sir R. H. by his indenture of assignment, sealed with his seal, and made on the seventeenth day of June 1697, at Boroughbridge aforesaid, between him the said sir R. H. of the one part, and B. B. of the parish of St. Margaret's, Westminster, in the said county of Middlesex, esquire, of the other part, (one part of which said indenture, sealed with the seal of the said sir R. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration of pounds to him paid by the said B. B. did bargain, sell, assign. transfer, and set over to the said B. B. his executors, administrators, and assigns, all the interest, estate, and term of ninety-nine years of him the said sir R. H. of and in the said bailiwick and the tolls thereof, to hold the same unto the said B. B his executors, administrators, and assigns, for the residue of the said term of ninety-nine years, in as large, ample, and beneficial a manner and form to all intents and purposes as he the said sir R. H. his executors or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became entitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers, and authorities thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord P. saith, that after the making of the indenture of assignment (that is to say) on the twentieth day of December 1705, the said Catherine, queen dowager of England, died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for the residue of the said term of ninety-nine years. And being so possessed, the said B. B. by a certain indenture of lease made on the twenty-second day of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year of Our Lord 1727, at Boroughbridge aforesaid, between him the said B. B. by his name

name and addition of B. B. of, &c. esq. of the one part, and the most noble lord T. H. duke of N. one of his then majesty's principal secretaries of state, and knight of the most noble order of the garter, and the right honourable H. P. esquire, his majesty's then secretary at war, and one of the lords of his then majesty's most honourable privy council, only brother of the said duke, of the other part, (one part of which said indenture, sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, (among other things) all that the said bailiwick of the said borough of Boroughbridge, in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from the feast of the Annunciation of the blessed Virgin Mary, then last past, before the date thereof, for and during and unto the full end and term of seven years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, or assigns, the yearly rent or sum of pounds, at certain times therein mentioned; by virtue of which said last mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick, and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the term of seven years, the residue of the said term of ninety-nine years, belonging to the said B. B. And being so possessed and entitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son, W. B. all and singular his the said B. B.'s leases for years, goods, chattels, and personal estate whatsoever, and did thereby constitute and appoint W. B. sole executor of the said will: and the said B. B. after the making of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid. And the said W. B. after the death of the said B. B. that is to say, on the tenth day of June 1728, to wit, at Boroughbridge aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of York, being the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. on the day and year last above mentioned, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh of July, in the third year of the reign of his late majesty king George the second, and in the year 1729, at Boroughbridge afore-

said, between him the said W. B. by his name and addition of W. B. of , esquire, of the one part, and the said T. H. duke of Newcastle and H. P. of the other part (one part of which said indenture, sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year last aforesaid) for the consideration therein mentioned, did grant, lease, set, and to farm let unto the said T. H duke of N. and H. P. their executors, administrators, and assigns (amongst other things) all that the said bailiwick of the said borough of Boroughbridge in the county of Y together with the said tolls there, and all and singular their rights, members, and appurtenances, to hold the same unto the said T. H duke of N. and H P. their executors, administrators, and assigns, from the determination of the said term of seven years, for and during and unto the full end and term of seventy years eight months and twenty days from thence next ensuing, and fully to be compleat and ended, yielding and paying therefore unto the said W, B. his executors, administrators, and assigns, the yearly rent or sum of one hundred and thirty pounds at certain times therein mentioned, by virtue of which said last mentioned indenture of lease, they the said T. H duke of N and H. P. became and were entitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the determination of the said term of seven years. And they the said T. H. duke of Newcastle and H P. being so possessed and intitled as aforesaid, the said H. P afterwards, and after the expiration of the said term of seven years, to wit, on the day of March 1754, at Boroughbridge aforesaid, died, the said T. H. duke of N. him surviving; and thereupon the said T. H. duke of N. became solely possessed and intitled of, in, and to the said bailiwick, tolls, and other the said premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the twenty-ninth day of February 1768, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed to H. duchess of N. by the description, name, and title, of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did of that his will nominate, constitute, and appoint his said dear wife, and the right honourable T. P. (now the said plaintiff lord P.) executors, and the said T. H. duke of N. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and by virtue thereof entered into and became, and were possessed of the said bailiwick, tolls,

tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed, the said H. dutchess of N. afterwards, to wit, on the seventh day of October 1772, at B. aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend T. lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said T. lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at B. aforesaid, departed this life without revoking or altering the same; and the said lord P. after the death of the said H. dutchess of N. that is to say, on the twenty-third day of July 1776, to wit, at B. aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof; by virtue of which said premises the said lord P. became, and was and still is possessed of the said bailiwick of the borough of Boroughbridge in the said county of Y. and the said tolls there, and all and singular the rights, members, and appurtenances thereunto belonging, for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, or passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times, by and at the south end of the said bridge of Boroughbridge over the said town, he the said J. P. at those several times not being lawfully exempt from the payment of the said tolls, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said town as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the said county, undertook and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money when he the said J. P. should be thereto requested. And whereas the manor of B. in the county of York, is a manor of the ancient demesne of the crown of England, as by the record of the book of Doomesday appears; and whereas the said manor was the inheritance and parcel of the possessions of the crown of England and of the dutchy of L. respectively, at divers periods for a long time, to wit, until the reign of Edward the sixth, late king

3d Count, Over the manor, &c.

 of

of England, and afterwards; and whereas all and singular the kings and queens of this realm, in right of the said crown of E. and dutchy of L. respectively for the time being, from time whereof, &c. have in respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and have been used and accustomed to have, take, and receive, and of right ought to have had, taken, received, and still of right ought to have, take, and receive at the bridge of the Borough, otherwise Boroughbridge within the said manor, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden, coming, going, or passing that way over the said manor, payable and paid, during all the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden so coming, going, or passing over the said manor as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon loaden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said manor by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Burrowbridge, in the county of Y. and which said bailiwick and the said tolls, long before the making the grant and demise hereafter next mentioned, had been annexed to and then were parcel of the possessions of the ancient dutchy of Lancaster; and whereas William the third, late king of England, on the ninth day of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his said dutchy of Lancaster; and being so seised, the said late king William the third by indenture of lease then made, and sealed with the seal of his said then majesty's said dutchy of Lancaster, bearing date the same day and year last above mentioned, and duly inrolled, (one part of which said indenture, sealed with the seal of his said majesty's dutchy of Lancaster, the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, by and with the advice and consent of his chancellor and the council of his said dutchy of L. did grant, demise, set, and to farm let unto R. H. knight, (amongst other things) all that the said bailiwick of the borough of Boroughbridge in the said county of Y. together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his said majesty's ancient dutchy of Lancaster, to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine, then queen dowager of England, from thence next ensuing fully

to be compleat and ended; by virtue of which ſaid demiſe he the ſaid ſir R. H. became entitled to the reverſion expectant on the deceaſe of the ſaid queen of and in the ſaid bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the ſaid terms thereby granted. And being ſo intitled, the ſaid ſir R. H. by his indenture of aſſignment ſealed with his ſeal, and made on the ſeventeenth day of June 1697, at aforeſaid, between him the ſaid ſir R. H. of the one part, and B. B. of, &c. eſquire, of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid ſir R. the ſaid lord P. now brings here into court, the date whereof is the ſame day and year laſt aforeſaid) for the conſideration of pounds, to him paid by the ſaid B. B. did bargain, ſell, aſſign, transfer, and ſet over unto the ſaid B. B. his executors, adminiſtrators, and aſſigns, all the intereſt, eſtate, and term of ninety-nine years of him the ſaid ſir R. H. of and in the ſaid bailiwick and the tolls thereof, to hold the ſame unto the ſaid B. B. his executors, adminiſtrators, and aſſigns, for the reſidue of the ſaid term of ninety-nine years, in as large, ample, and beneficial manner and form to all intents and purpoſes as he the ſaid ſir R. H. his executors or adminiſtrators, had or might or ought to have and enjoy the ſame by force and virtue of the ſaid recited indenture of leaſe to him the ſaid ſir R. H. granted as aforeſaid, or any thing therein contained; by virtue of which ſaid indenture of aſſignment he the ſaid B. B. became intitled to the reverſion expectant on the deceaſe of the ſaid queen, of and in the ſaid bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the remainder of the ſaid term of ninety-nine years. And the ſaid lord P. ſaith, that after the making of the ſaid indenture of aſſignment, that is to ſay, on the twentieth day of December 1705, the ſaid Catherine, queen dowager of E. died, and thereupon the ſaid B. B. entered into the ſaid bailiwick, and became and was poſſeſſed thereof, and of the ſaid tolls, and all the rights, privileges, powers and authorities thereunto belonging, for the reſidue of the ſaid term of ninety-nine years. And being ſo poſſeſſed, the ſaid B. B. by a certain indenture of leaſe made on the twenty-ſecond day of May, in the thirteenth year of king George the firſt, and in the year 1727, at aforeſaid, between him the ſaid B. B. by his name and addition of B. B. of, &c. of the one part, and the moſt noble lord T. H. duke of N. one of his majeſty's then principal ſecretaries, &c. &c. and the right honourable H. P. eſquire, his then majeſty's ſecretary at war, &c. only brother of the ſaid duke, of the other part, (one part of which ſaid indenture, ſealed with the ſeal of the ſaid B. B. the ſaid lord P. now brings here into court, the date whereof is the ſame day and year laſt aforeſaid) for the conſideration therein mentioned, did demiſe, leaſe, ſet, and to farm let unto the ſaid T. H. duke of N. and H. P. their executors, adminiſtrators and aſſigns (among other things)

things) all that the bailiwick of the borough of Boroughbridge in the county of Y. together with the said tolls there, and all and singular the rights, members, and appurtenances, unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators and assigns, from, &c. for and during and unto the full end and term of years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, or assigns, the yearly rent or sum of l. at certain times therein mentioned; by virtue of which said last-mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety nine years, belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth day of April 1728, at aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son W. B. all and singular the said B. B.'s leases for years, goods, chattels, and personal estate whatsoever, and did thereby constitute and appoint the said W. B. sole executor of his said will; and the said B. B. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at B. aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid. And the said W. B. after the death of the said B. B. that is to say, on the tenth day of June 1728, to wit, at B. B. aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of Y. being the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. in the day and year last aforesaid, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh day of July, in the third year, &c. of king George the second, and in the year 1729, at Boroughbridge aforesaid, between him the said W. B. by his name and addition of W. B. of, &c. of the one part, and the said T. H, duke of N. and H. P. esquire, of the other part (one part of which said indenture sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year aforesaid) for the consideration therein mentioned, did grant, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns (among other things) all that the said bailiwick of the borough of Boroughbridge, in the county of Y. together with the said tolls there, and all and singular the rights, members, and appurtenances; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from, &c. for and during and unto the full end and term of years from thence next ensuing, and

and fully to be compleat and ended; yielding and paying therefore unto the said W. B. his executors, administrators, and assigns, the yearly rent of at certain times therein mentioned; by virtue of which said last mentioned indenture of lease, they the said T. H. duke of N. and H. P. became and were intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the said determination of the said term of seven year. And they the said T. H. duke of N. and H. P. being so possessed and intitled as aforesaid, the said H. P. afterwards, and after the expiration of the said term of seven years, to wit, on the of March 1754, at aforesaid, died, the said T. H. duke of N. him surviving; and thereupon the said T. H. duke of N. became solely possessed and intitled of, in, and to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of . And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the day of February 1768, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed to H. dutchess of N. by the description, name, and title of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did of that his will nominate, constitute, and appoint his said dear wife and the right honourable T. P. (now the said plaintiff lord P.) his executors, &c.; and the said T. H. duke of N. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and by virtue thereof entered into and became, and were possessed of the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of . And being so possessed, the said H. dutchess of N. afterwards, to wit, on the seventh day of October 1772, at Boroughbridge aforesaid, duly made her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend T. lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said T. lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same; and the said lord P. after the death of the said H. dutchess of N. that is to say, on the twenty-second day of July 1776, to wit, at Boroughbridge, duly proved the said will of the said

said dutchess of N in the proper ecclesiastical court, and took upon himself the execution thereof, by virtue of which said premises the said lord P. became, and was and still is possessed of the said bailiwick of the borough of boroughbridge in the county of Y and the said tolls there, and also all and singular the rights, members, and appurtenances thereunto belonging, for the residue of the said term of seventy years eight months and twenty days And being so thereof possessed, the said J P. afterwards, to wit, on the said first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, and passed with his wayne or waggon loaden divers times, to wit, one thousand two hundred times over the said manor, by and at the south end of the said bridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said tolls, whereby the said J. P became liable to pay to the said lord P. for the passage of such wayn or waggon loaden over the said manor as aforesaid, a large sum of money, to wit, the sum of thirty pounds being sixpence a time for each and every time of the said J P. coming, going, or passing with his said wayn or waggon loaden over the said manor as aforesaid, whereof the said J P afterwards, to wit, on the same day and year last aforesaid at Boroughbridge aforesaid, in the county aforesaid, had notice, and being so liable, he the said J P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P to pay him the said last mentioned sum of money when he the said J. P should be thereto requested. And whereas the manor of B. in the county of Y is a manor of the ancient demesne of the crown of England, as by the record of the book of Domesday appears, and whereas the said manor was the inheritance and parcels of the [illegible] of the crown of England, and of the dutchy of L. respectively divers periods for a long time, to wit, until the [illegible] of Edward the sixth, late king of England, &c. and afterwards, and whereas the town of B. now is, and from time whereof, &c hath been within and parcel of the same manor, and whereas all and singular the kings and queens of this realm, in right of the said crown of England and dutchy of Lancaster respectively, for the time being, from time whereof, &c have in respect of such manor by their respective bailiffs and farmers for the time being, had, taken and received, and have been used and accustomed to have, take, and receive, and of right ought to have had, taken, and received, and still of right ought to have, take, and receive at the bridge of Boroughbridge within the said town, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden, coming, going, or passing that way over the said town, payable and paid during the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden so coming, going, or passing over the said town, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or

4th Count, Over the town, &c. [the marginal note is printed beside "the said J. P should be thereto requested. And whereas the manor of B."]

or waggon loaden over the said town, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said town, by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making the grant and demise hereafter next mentioned, had been and was called, known, and distinguished by the name of the bailiwick of the borough of Burrowbridge, in the county of York, and which said bailiwick, and the said tolls, long before the making of the grant and demise hereafter next mentioned, had been annexed to and then were parcel of the possessions of the ancient dutchy of L.; and whereas William the third, late king of E. &c. on the nineteenth of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his said dutchy of L. and being so seised, the said late king William the third, by his indenture of lease then made and sealed with the seal of his said then majesty's said dutchy of L. bearing date the same day and year last above mentioned, and duly enrolled, (one part of which said indenture, sealed with the seal of his said majesty's dutchy of L. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the consideration therein mentioned, by and with the advice and consent of his chancellor or council of his said dutchy of L. did grant, demise, set, and to farm let unto R. H. knight (among other things), all that the said bailiwick of the said borough of Burrowbridge, in the said county of Y. together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his majesty's ancient dutchy of L. to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence after the decease of her majesty Catherine then queen dowager of England, from thence next ensuing, and fully to be compleat and ended; by virtue of which said demise he the said sir R. H. became intitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for and during the said term thereby granted. And being so intitled, the said sir R. H. by his indenture of assignment, sealed with his seal, and made on the seventeenth day of June 1697, at Burrowbridge aforesaid, between him the said sir R. H. of the one part, and B. B. of, &c. of the other part, (one part of which said indenture, sealed with the seal of the said sir R. H. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the consideration of ——— to him paid by the said B. B. did bargain, sell, assign, transfer, and set over unto the said B. B. his executors, administrators, and assigns, all the interest, estate, and term of ninety-nine years of him the said R. H. of and in the said bailiwick and the tolls thereof; to hold the same unto the said B. B. his executors, &c. for the residue

residue of the said term of ninety-nine years, in as large, ample, and beneficial manner, to all intents and purposes, as he the said sir R. H. his executors, or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became entitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities, thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord P. saith, that after the making of the said indenture of assignment, that is to say, on the twentieth day of December 1705, the said C. queen dowager of E. died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers and authorities thereunto belonging, for the residue of the said term of ninety-nine years. And being so possessed, the said B. B. by a certain indenture of lease made on the twentieth of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year 1727, at Burrowbridge aforesaid, between him the said B. B. by his name and addition of B. B. of, &c. esquire, of the one part, and the most noble T. H. duke of Newcastle, one of his then majesty's, &c. &c. and the right honourable H. P. esquire, his then majesty's, &c. &c. brother of the said duke, of the other part, (one part of which said indenture, sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, &c. (among other things) all that the said bailiwick of the said borough of Boroughbridge in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, &c. from, &c. then last past, for and during and unto the full end and term of seven years from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, &c. the yearly rent or sum of pounds at certain times therein mentioned; by virtue of which said last mentioned indenture of lease they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick, and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety-nine years, belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son W. B. all and singular the said B. B.'s leases for years, goods and chattels, and personal

ſonal eſtates whatſoever, and did thereby conſtitute and appoint the ſaid W. B. ſole executor of his ſaid will; and the ſaid B. B. after the making and publiſhing of his ſaid will, to wit, on the ſame day and year laſt aforeſaid, at Boroughbridge aforeſaid, departed this life without revoking or altering the ſame, ſo poſſeſſed and intitled as aforeſaid. And the ſaid W. B. after the death of the ſaid B. B. that is to ſay, on the tenth of June 1728, to wit, at Boroughbridge aforeſaid, duly proved the ſaid will of the ſaid B. B. in the prerogative court of the archbiſhop of Y. being the proper court for that purpoſe, and took upon himſelf the execution thereof; by virtue of which ſaid will of the ſaid B. B. the ſaid W. B. on the day and year laſt abovesaid, became intitled to the ſaid bailiwick, tolls, and other the premiſes herein before mentioned, for and during the ſaid reſidue of the ſaid term of ninety-nine years. And being ſo intitled, the ſaid W. B. by his indenture of leaſe made the eleventh of July, in the third year of the reign of his late majeſty king George the ſecond, and in the year 1729, at Boroughbridge aforeſaid, afterwards, between him the ſaid W. B. by his name and addition of, &c. of the one part, and the ſaid T. H. duke of N. and H. P. eſquire, of the other part, (one part of which ſaid indenture, ſealed with the ſeal of the ſaid W. B. the ſaid lord P. now brings here into court, the date whereof is the day and year laſt aforeſaid), for the conſiderations therein mentioned, did grant, leaſe, ſet, and to farm let unto the ſaid T. H. duke of N. and H. P. their executors, &c. (among other things) all that the ſaid bailiwick of the borough of Boroughbridge in the county of Y. together with the ſaid toll there, and all and ſingular the rights, members, and appurtenances; to hold the ſame unto the ſaid T. H. duke of N. and H. P. their executors, &c. from the determination of the ſaid term of ſeven years, for and during the full end and term of ſeventy years eight months and twenty days from thence next enſuing, and fully to be compleat and ended; yielding and paying therefore unto the ſaid W. B. his executors, &c. the yearly rent of   pounds, at certain times therein mentioned; by virtue of which ſaid laſt mentioned indenture of leaſe, they the ſaid T. H. duke of N. and H. P. became and were entitled to the ſaid bailiwick, tolls, and other the premiſes herein before mentioned, for and during the ſaid term of ſeventy years eight months and twenty days, from the determination of the ſaid term of ſeven years. And the ſaid T. H. duke of N. and H. P. being ſo poſſeſſed and intitled as aforeſaid, the ſaid H. P. afterwards, and after the expiration of the ſaid term of ſeven years, to wit, on the ſixth of March 1754, at Boroughbridge aforeſaid, died, the ſaid T. H. duke of N. him ſurviving; and thereupon the ſaid T. H. duke of N. became ſolely poſſeſſed and intitled of, in, and to the ſaid bailiwick, tolls, and other the premiſes herein before mentioned, for and during the reſidue of the ſaid term of ſeventy years eight months and twenty days. And being ſo poſſeſſed as aforeſaid, the ſaid T. H. duke of N. afterwards, to wit, on the twenty-ninth of February 1768, at

Borough-

Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed to H. dutchess of N. by the description, name, and title of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did of that his will nominate, constitute, and appoint his said dear wife and the right honourable T. P. (now the said plaintiff lord P.) executors; and the said T. H. duke of N. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and by virtue thereof entered into and became and were possessed of the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed, the said H. dutchess of N. afterwards, to wit, on the seventh day of October 1772, at Boroughbridge aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend T. lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said T. lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same; and the said lord P. after the death of the said H. dutchess of N. that is to say, on the twenty-second of July 1776, to wit, at Boroughbridge aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof, by virtue of which said premises the said lord P. became, and was, and still is possessed of the said bailiwick of the borough of Boroughbridge in the said county of Y. and the said tolls there, and all and singular the rights, members, and appurtenances thereunto belonging, for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first of January 1780, and on divers other days and times between that day and the first of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said town, by and at the south end of the said bridge of Boroughbridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said tolls, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said town as aforesaid, a large sum of money, to wit, the sum of thirty

thirty pounds, being sixpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J.P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested. And whereas the manor of Aldbridge, otherwise Boroughbridge, otherwise Allbridge and Bridge, otherwise Boroughbridge and Aldbridge, in the county of York, is an ancient manor; and whereas the said lord P. on the first of January 1780, was, and from thenceforth hitherto hath been, and still is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received, at the bridge of the Borough, otherwise Boroughbridge, within the said manor, a certain reasonable, that is to say, a toll of fourpence for every wayne or waggon loaden, coming, going, or passing that way over the said manor, payable during all the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden, so coming, going, or passing over the said manor as aforesaid, to the said lord P. for the passage of such wayne or waggon loaden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. not being lawfully exempt from the payment of the said toll, afterwards, to wit, on the said first of January 1780, and on divers other days and times between that day and the first of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said manor by and at the south end of the said bridge of the Borough, otherwise Boroughbridge, he the said John P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the toll of such wayne or waggon loaden, so coming, going, and passing over the said manor as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested. And whereas the town of Burrowbridge, in

5th Count, That lord P. was intitled generally for toll over his *manor* of Aldbridge otherwise Boroughbridge toll.

6th Count, Stating Boroughbridge to be an ancient town for tolls passing over the town.

the county of Y. is an ancient town; and whereas the ſaid lord P. on the firſt of January 1780, was, and from thenceforth hitherto hath been and ſtill is lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Burrowbridge within the ſaid town, a certain reaſonable toll, that is to ſay, a toll of fourpence for every wayne or waggon loaden coming, going, or paſſing that way over the ſaid town, payable during all the time aforeſaid, by the proprietor or proprietors of ſuch wayne or waggon loaden, ſo coming, going, or paſſing over the ſaid town as aforeſaid, to the ſaid lord Pelham, for the paſſage of ſuch wayne or waggon loaden over the ſaid town, ſave and except the waynes and waggons of any perſon or perſons lawfully exempt from the payment of the ſaid toll; and whereas the ſaid lord P. being ſo intitled as aforeſaid, the ſaid John P. afterwards, to wit, on the firſt day of January 1780, and on divers other days and times between that day and the ſaid firſt of May 1785, came, went, and paſſed with his wayne or waggon loaden divers, to wit, one thouſand two hundred times over the ſaid town, by and at the ſouth end of the ſaid bridge, he the ſaid J. P. at thoſe ſeveral times not being lawfully exempt from the payment of the ſaid toll, whereby the ſaid J. P. became liable to pay to the ſaid lord P. as and for the tolls for ſuch wayne or waggon loaden, ſo coming, going, and paſſing over the ſaid town as aforeſaid, a large ſum of money, to wit, the ſum of pounds, being fourpence a time for each and every time of the ſaid John P.'s coming, going, and paſſing with his ſaid wayne or waggon loaden over the ſaid town as aforeſaid; whereof the ſaid J. P. afterwards, to wit, on the ſame day and year laſt aforeſaid, at Boroughbridge aforeſaid, to wit, on the ſame day and year laſt aforeſaid, at B. aforeſaid, in the county aforeſaid, had notice; and being ſo liable, he the ſaid J. P. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at B. aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid lord P. to pay him the ſaid laſt mentioned ſum of money when he the ſaid J. P. ſhould be thereto requeſted. And whereas the manor of Aldborough, otherwiſe Burrow-Bridge, otherwiſe Aldboro and Burrow-Bridge, otherwiſe Boro-Bridge and Aldboro, in the county of York, is an ancient manor, and that the ſaid lord P on the firſt day of January 1780, was, and from thenceforth hitherto hath been and ſtill is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Boroughbridge within the ſaid manor, a certain reaſonable toll, that is to ſay, a toll of ſixpence for every wayne or waggon loaden coming, going, or paſſing that way over the ſaid manor, payable during all the time aforeſaid by the proprietor or proprietors of ſuch wayne or waggon loaden ſo coming, going, or paſſing over the ſaid manor as aforeſaid, to the ſaid lord P. for the paſſage of ſuch wayne or waggon loaden over the ſaid manor as aforeſaid, ſave and except the waynes or waggons of any perſon or perſons lawfully exempt from the payment

7th Count, Over the *manor* of Aldborough.

of

of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. not being lawfully exempt from the payment of the said toll, afterwards, to wit, on the first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said manor by and at the south end of the said bridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls of such wayne or waggon loaden, so coming, going, and passing over the said manor as aforesaid, a large sum of money, to wit, the sum of thirty pounds, being sixpence a time for each and every time of the said John P. coming, going, and passing with his wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Burrowbridge aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested. And whereas the town of Boroughbridge, in the county of Y. is an ancient town; and whereas the said lord P. on the first day of January 1780, was, and from thenceforth hitherto hath been and still is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Boroughbridge within the said town, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden coming, going, or passing that way over the said town as aforesaid, to the said lord P. for the passage of such wayne or waggon loaden over the said town, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. afterwards, to wit, on the said first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, and passed with his wayne or waggon divers, to wit, one thousand two hundred times over the said town, by and at the south end of the said bridge of Boroughbridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls of such wayne or waggon, so coming, going, and passing over the said town as aforesaid, a large sum of money, to wit, the sum of pounds, being sixpence a time for each and every time of the said John P coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, had notice.

8th Count, Ancient town of Boroughbridge for passing over the ...

notice; and being ſo liable, he the ſaid J. P. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at Boroughbridge aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid lord P. to pay him the ſaid laſt mentioned ſum of money, when he the ſaid J. P. ſhould be thereto requeſted.

9th. A general Count, ſtating all the ancient names of the manor for paſſing over the manor.

And whereas the ſaid J. P. on the ſame day and year laſt aforeſaid, at B. aforeſaid, was indebted to the ſaid lord P. in the further ſum of one hundred pounds of like lawful money, for the tolls before that time due and of right payable from the ſaid J. P. to the ſaid lord P. for the paſſage of divers cattle and carriages over the manor of Bure, otherwiſe Burg, otherwiſe Aldburg, otherwiſe Aldborough, otherwiſe Burg-Brigge, otherwiſe Boroughbridge, otherwiſe Aldborough and Boroughbridge, otherwiſe Boroughbridge and Aldborough, in the ſaid county, and for the paſſage of divers other cattle and carriages over the town of Burghbridge, otherwiſe Boroughbridge, in the ſame county; and being ſo indebted, he the ſaid J. P. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at B. aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid lord P. to pay him the ſaid laſt mentioned ſum of money, when he the ſaid J. P. ſhould be thereto requeſted: Yet the ſaid J. P. in no wiſe regarding his ſaid ſeveral promiſes and undertakings, made in manner as aforeſaid, but contriving, &c. to deceive and defraud the ſaid lord P. in this reſpect, hath not paid to the ſaid lord P. the ſaid ſeveral ſums of money, or any part thereof, though ſo to do he the ſaid J. P. afterwards, to wit, on the ſaid ſeveral days and times laſt above mentioned, and often afterwards, to wit, at B. aforeſaid, in the county of Y. aforeſaid was requeſted by the ſaid lord P.; but to pay the ſame, or any part thereof, to the ſaid lord P. he the ſaid J. P. hath hitherto wholly refuſed, and ſtill doth refuſe; whereupon the ſaid lord P. ſaith that he is injured, and hath ſuſtained damage to the value of one thouſand pounds; and therefore he brings ſuit, &c. G. Wood.

General indebitatus aſſumpſit by a toll-gate keeper for tolls accrued due for paſſing through with horſes, carts, &c.

CHESHIRE, to wit. James Bridgeway complains of Thomas Harrop being, &c. in a plea of treſpaſs on the caſe, &c. for that whereas, long before and on the firſt day of January A. D. 1792, and from thence continually hitherto, there hath been, and ſtill is, a certain public king's highway, leading from the market town of A. in the county of Cheſter, to the market-town of B. in the ſame county, for all his majeſty's liege ſubjects to go, return, paſs, and repaſs upon and over by themſelves, and with cattle, carts, and carriages, at all times at their will and pleaſure; and whereas during all the times aforeſaid, certain tolls and duties have been of right due and payable by all perſ[illegible] paſſing upon and along the ſaid king's highway with cattle, carts, and carriages; and the ſaid James, during all the time aforeſaid, hath been, and ſtill is, occupier and keeper of a certain toll-houſe and

gate

gate upon the ſaid king's highway, ſituate in the pariſh of S. in the ſaid county of C. and farmer of the ſame tolls and duties, and lawfully entitled to aſk, demand, and receive the ſame there for all cattle, carts, and carriages paſſing along the ſaid highway through the ſaid gate: and whereas, during the time aforeſaid, and while the ſaid James was ſo entitled to the tolls and duties aforeſaid, that is to ſay, on the day and year aforeſaid, and on divers other days and times between that day and the commencement of this ſuit, he the ſaid Thomas did go, return, paſs, and repaſs with divers cattle, carts, and carriages, by and along the ſaid highway and through the ſaid gate, and by reaſon thereof became liable to pay to the ſaid James, for the tolls and duties for the ſame of right payable as aforeſaid, a large ſum of money, to wit, the ſum of twenty pounds, of lawful money of Great Britain: and being ſo liable, he the ſaid Thomas, in conſideration thereof, afterwards, to wit, on the ſeventh day of February, A. D. 1792, at the pariſh aforeſaid, in the county aforeſaid, undertook, and faithfully promiſed the ſaid James to pay him the ſaid ſum of money, when he the ſaid Thomas ſhould be thereunto afterwards requeſted. And whereas the ſaid Thomas afterwards, to wit, on the day and year laſt aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, was indebted to the ſaid James in the ſum of twenty pounds, of like lawful money, for certain other tolls and duties then and there due and payable from the ſaid Thomas to the ſaid James, as the farmer and collector of the ſaid tolls and duties of right due and payable for cattle, carts, and carriages paſſing and repaſſing by and along the ſaid king's highway, for and in reſpect of certain cattle, carts, and carriages of the ſaid Thomas having before that time, at divers days and times, gone, paſſed and repaſſed upon, along, and over the ſaid highway, whilſt the ſaid James was ſuch farmer and collector as aforeſaid; and being ſo indebted, he the ſaid Thomas, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid James to pay him the ſaid laſt mentioned ſum of money, when he the ſaid Thomas ſhould be thereto afterwards requeſted. (Counts for money paid, lent and advanced; accounts ſtated, and common concluſion.) Pledges, &c.

2d Count, A farmer &c.

CORNWALL, to wit. The mayor and free burgeſſes of the borough of Saltaſh complain of Maynard Sparks being, &c. for that whereas the ſaid mayor and free burgeſſes, on the 13th day of October A. D. 1759, were, and from thence continually hitherto have been, and ſtill are, lawfully entitled to have and receive a certain reaſonable toll or duty called tonnage, that is to ſay, for every ton of goods belonging to any natural-born ſubject or ſubjects of this realm imported in any ſhip or veſſel in the port of Saltaſh, and there unloaded, unleſs by meaſure, to be paid by the maſter and commander of ſuch ſhip or veſſel (ſuch goods not belonging to any

For tolls and port duties.

 perſon

person or persons, or imported in any ſhip or veſſel, in that behalf exempt): and the ſaid mayor and free burgeſſes further ſay, that whilſt they were ſo entitled to have and receive the ſaid toll or duty, to wit, on the firſt day of January, A. D. 1760, divers goods, to wit, forty tons of flour, belonging to a natural-born ſubject or natural-born ſubjects of this realm, were imported in a certain ſhip or veſſel, into the ſaid port of S. to wit, at the pariſh of Menne, in the ſaid county of C. and there unloaded, and not by meaſure, of which ſaid ſhip or veſſel the ſaid Maynard was then and there maſter or commander, the perſon or perſons to whom the ſaid goods belonged, or the ſaid ſhip or veſſel in which the ſaid goods were ſo imported, not then being exempt from the ſaid toll or duty in that behalf; by reaſon of which ſaid premiſes, the ſaid Maynard became liable to pay to the ſaid mayor and free burgeſſes ſix ſhillings and eight-pence, being at and after the rate of two pence for every ton of the ſaid goods ſo imported by the ſaid Maynard into the ſaid port of S. and there unloaded as aforeſaid, to wit, at the pariſh aforeſaid; whereof the ſaid Maynard afterwards, to wit, on the ſame day and year laſt aforeſaid, then had notice; and being ſo liable, the ſaid Maynard in conſideration thereof, afterwards, on the ſame day and year laſt aforeſaid, at the pariſh aforeſaid, in the ſaid county, undertook, and to the ſaid mayor and free burgeſſes faithfully promiſed, to pay to them the ſum of ſix ſhillings and eight-pence, when he ſhould be thereto afterwards requeſted. And whereas alſo the ſaid mayor and free burgeſſes, on the ſaid thirteenth day of October, A. D. 1759, and from thence hitherto continually have been, and ſtill are, lawfully entitled to have and receive a certain reaſonable toll or duty called *quarterage*, that is to ſay, one halfpenny for every quarter of goods belonging to any natural-born ſubject or ſubjects of this realm, loaded by meaſure into any ſhip or veſſel within the ſaid port of S. to be exported in ſuch ſhip or veſſel from thence, or imported in any ſhip or veſſel within the ſaid port, and there unloaded by meaſure out of ſuch ſhip or veſſel, the ſaid toll or duty called quarterage to be paid by the maſter and commander of ſuch reſpective ſhip or veſſel in that behalf empty, when empty: and the ſaid mayor and free burgeſſes further ſay, that whilſt they the ſaid mayor and free burgeſſes were entitled to have and receive the ſaid laſt-mentioned toll or duty, to wit, on the firſt day of January, A. D. 1760, a large quantity of grain, to wit, oats amounting to a great number of quarters, to wit, one thouſand quarters, belonging to a natural born ſubject or natural-born ſubjects, were loaded into a certain ſhip or veſſel within the ſaid port of S. to wit, at the pariſh of M. aforeſaid, in the ſaid county of C. in order to be exported in ſuch ſhip or veſſel from thence, of which ſaid ſhip or veſſel he the ſaid Maynard was then and thence maſter and commander, and the perſon or perſons to whom the ſaid grain ſo belonged in the ſhip or veſſel in which the ſaid grain was ſo loaded as aforeſaid, not then being exempt from the ſaid *laſt-mentioned* toll or duty; by reaſon of which ſaid premiſes, the ſaid Maynard became

2d Count, For *quarterage* on grain.

became liable to pay to the said mayor and free burgesses two pounds one shilling and eight-pence, being at and after the rate of one halfpenny by the quarter for every quarter of the said grain so loaded into the said ship or vessel within the said port of S. as aforesaid, to wit, at the parish aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year aforesaid, there had notice; and being so liable, &c. promised, &c. And whereas also the said mayor and free burgesses, on the said thirteenth day of October, A. D. 1759, and from thence continually hitherto have been, and still are, lawfully entitled to have and receive a certain other toll or duty called quarterage, that is to say, one penny for every quarter of goods belonging to any natural-born subject or subjects of this realm, loaded by measure into any ship or vessel within the said port of S. to be exported in such ship or vessel from thence, or imported in any ship or vessel within the said port, and there unloaded by measure out of such ship or vessel, the said quarter to be computed according to the ancient water-measure of the said port, and the said toll or duty called quarterage to be paid by the master and commander of such respective ship or vessel, such goods not belonging to any person or persons, or loaded or unloaded into or out of any ship or vessel in that behalf exempt: and the said mayor and free burgesses further say, that whilst they the said mayor and free burgesses were so entitled to have and receive the said *last-mentioned* toll or duty, to wit, on the first day of January, A. D. 1760, a large quantity of oats, amounting to a great number of quarters, to wit, one thousand quarters, according to the ancient water-measure of the said port, belonging to a natural-born subject or subjects of this realm, was loaded into a certain ship or vessel within the said port of S. to wit, at the parish of M. aforesaid, in the county of C. in order to be exported in such ship or vessel from thence; of which said ship or vessel the said Maynard was then and there master and commander, and the said person or persons to whom the said grain so belonged, or the said ship or vessel in which the said grain was so loaded as aforesaid, not then being exempt from the said last-mentioned toll or duty; by reason of which said premises the said Maynard became liable to pay to the said mayor and free burgesses four pounds three shillings and four-pence, being at and after the rate of one penny by the quarter for every quarter of the said grain, according to the said ancient water measure, so loaded in the said ship or vessel within the said port of S. to wit, at the parish aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year last aforesaid, there had notice; and being so liable, &c. promised, &c. And whereas the said port of S. on the said thirteenth of October, A. D. 1759, and long before, was, and from thence hitherto hath been, and still is, a navigable *anchoring* port for all ships or vessels to sail to or from the sea, and to stay and anchor in at all times of the year, to wit, at the parish of R. in the said county of C.: and whereas the said mayor and free burgesses, on the thirteenth of October, A. D. 1759, were, and from

3d Count, For *quarterage* on oats.

4th Count, For *buoyage* and *anchorage*.

thence continually hitherto have been, and still are, lawfully possessed of the said port, and during the time last aforesaid have maintained and supported, and still of right ought to have maintained and supported, and still of right ought to maintain and support, a certain *buoy* floating within the said port, for the benefit and sole direction of ships or vessels during that time sailing into or out of the said port, to or from the sea; and by reason of the said premises, the said mayor and free burgesses, during all the time *last aforesaid*, have been lawfully entitled to have and receive, and of right ought to have had and received, a certain reasonable toll or duty of two shillings of and from every ship or vessel of or belonging to any subject of this realm, sailing from the sea into the said port, and anchoring therein, other than ships or vessels in that behalf exempt. And the said mayor and free burgesses further say, that whilst they were so possessed of the said port, and maintained and supported the said buoy as aforesaid, that is to say, between the said thirteenth of October, A. D. 1759 and the fifteenth of January, A. D. 1760, divers ships or vessels of the said Maynard, to wit, one hundred ships or vessels of the said Maynard, sailed from the sea into the said port of S. and anchored there, to wit, at the parish aforesaid, he the said Maynard during all that time being a subject of this realm, and the said ships or vessels, or any of them, not being during all or any part of that time exempt from the said *last-mentioned* toll or duty, whereby the said Maynard became liable to pay to the said mayor and free burgesses the sum of two shillings for each and every ship or vessel of the said Maynard so sailing from the sea into the said port of S. and anchoring therein as aforesaid, for the toll or duty last aforesaid, amounting in the whole to a large sum of money, to wit, the sum of pounds of lawful, &c. that is to say, at the parish aforesaid, in the county aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year last aforesaid, then had notice; and being so liable, &c. promised, &c. (Fifth Count, for anchorage only. Sixth Count, for *buoyage* only. Seventh Count, for tolls and duties on goods more general. Eighth Count, for tonnage within the liberty and district of the water of Thames, of which the said mayor and free burgesses are proprietors. Like Counts as before, for quarterage, anchorage, buoyage, and with the liberty of the water hammer.) Yet the said Maynard, not regarding his said promises, but, &c. hath not paid, &c.

FOR CONTRIBUTION TO PARTY WALLS (a).

Indebitatus assumpsit in B. R. for *contribution to party walls*, 14. Geo. III.

J. S. complains of A. P. being, &c. for that whereas after the making of a certain Act, made at the parliament of our sovereign lord

which had been pulled down and repaired by plaintiff, pursuant to act of parliament.

(a) See Actions on Statutes.

lord the now king holden at Weſtminſter, in the county of Middleſex, in the fourteenth year of his reign, and intitled, "An act for "the further and better regulation of buildings and party walls, and "for the more effectually preventing miſchiefs by fire within the "cities of London and Weſtminſter, and the liberties thereof, and "other the pariſhes, precincts, and places within the weekly bills "of mortality, the pariſhes of St. Mary le Bonne, Paddington, St. "Pancras, and St. Luke at Chelſea, in the county of Middleſex, and "for indemnifying, under certain conditions, builders and other perſons "againſt the penalties to which they are or may be liable for erecting "buildings within the limits aforeſaid, contrary to law," to wit, on the firſt of November, A. D. 1787, a certain old party wall had been pulled down, and a certain other party wall built in lieu thereof, by and at the expence of the ſaid Jonathan, agreeably to the direction of the ſaid act of parliament, between certain buildings of him the ſaid Jonathan, ſituate and being in the city of L. to wit, in the pariſh of St. Peter, in the ward of Queenhithe, and certain other buildings there adjoining thereto, being of the ſame rate or claſs of buildings as the aforeſaid buildings of the ſaid Jonathan; and upon that occaſion the ſaid Andrew did make uſe of a great part of the ſaid laſt mentioned party wall, and at the time of building and finiſhing the ſame was the owner and perſon entitled to the improved rent of ſuch adjoining building, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid; by means whereof, and according to the tenor and effect of the ſaid act of parliament in that behalf, he the ſaid Andrew became liable to reimburſe and pay to the ſaid Jonathan a certain ſum of money, to wit, the ſum of two hundred pounds of lawful money of Great Britain, being one moiety of the expence of building ſo much of the ſaid party wall, ſo built as aforeſaid, as the ſaid Andrew did make uſe of, after the rate in the ſaid act mentioned, together with a like proportional part of certain other expences which were neceſſary to the pulling down the ſaid old party wall, amounting in the whole to another large ſum of money, to wit, the ſum of fifty pounds of like lawful money of Great Britain, and making together with the ſaid ſum of two hundred pounds, the ſum of two hundred and fifty pounds of like lawful money of Great Britain; and being ſo liable, he the ſaid Andrew, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, undertook, and faithfully promiſed the ſaid Jonathan, to pay him the ſaid ſum of two hundred and fifty pounds, when he the ſaid A. ſhould be thereto afterwards requeſted: and although he the ſaid Jonathan, in purſuance of the ſaid act of parliament, did, ſo ſoon as conveniently might be after the ſaid party wall was ſo built as aforeſaid, to wit, on the fourteenth day of September, A. D. 1787, at L. aforeſaid, in the pariſh and ward aforeſaid, leave at ſuch adjoining building an account in writing of the number of rods in ſuch party wall for which the ſaid Andrew was liable to pay, and of the deduction which he the ſaid Andrew was entitled to make

thereout,

thereout, on account of the materials of the old party wall aforesaid, and also on account of such other expences as aforesaid, and did then and thereby demand payment thereof, according to the said act of parliament in that behalf; yet he the said Andrew, not regarding the said act of parliament, nor his said promise and undertaking so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Jonathan in this behalf, did not, nor would, within twenty-one days next after such demand was made as aforesaid, or at any time afterwards, (although often requested,) reimburse or pay to him the said Jonathan the said sum of two hundred and fifty pounds, or any part thereof, but hath hitherto wholly refused and neglected so to do. And whereas the said A. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, was indebted to the said J. in two hundred and fifty pounds of like lawful money of Great Britain, for part of the expence of building a certain party wall before then built by and at the expence of the said Jonathan, agreeably to the directions of the said act of parliament, between certain buildings of him the said Jonathan, situate and being at, &c. aforesaid, and certain other buildings there adjoining thereto, and which said last-mentioned party wall had before then been made use of by the said A. who before, and at the time of building and finishing the same, was the owner of and person entitled to the improved rent of such adjoining buildings, and also for part of certain other expences which were necessary for the pulling down of a certain old party wall between the said several buildings before then pulled down by and at the expence of him the said Jonathan, agreeably to the directions o the said act of parliament; and being so indebted, he the said A. in consideration thereof, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said Jonathan, to pay him the said last-mentioned sum of money, when he the said Andrew should be thereto afterwards requested, &c. [See conclusions, &c. to Declarations.]

2d Count more general.

BY AND AGAINST PARTICULAR PERSONS.—CARRIERS, &c. (a).

General *indebitatus assumpsit* for carriage of goods by land *quantum meruit*.

(b) FOR the carriage of divers goods, wares, and merchandizes by the said A. B. before that time carried and conveyed in certain waggons, carts, and other carriages of the said A. B. from, &c. to, &c. for the said C. D. at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said A. B. at the specia instance and request o the said C. D. had

(a) See Attornies, Executors and Administrators, Bankrupts, and their assignees, Corporations, &c. Baron and Feme, &c. &c.

(b) See beginnings and conclusions to Declarations, &c. for all these Counts.

had before that time carried and conveyed divers other goods, &c. of the said C. D. for the said C. D. in certain other waggons of the said A. B. from, &c. to, &c. he the said C. D. undertook, &c. to pay him so much as, &c. and the said A. B. avers that, &c. [For the beginning of and conclusion to these Counts, see beginnings and endings of Declarations under that head.]

For demorage of a lighter.

FOR the demorage of a certain vessel called a lighter of the said A. B. by him the said defendant retained and used with divers goods and merchandizes on board of the said lighter, on demorage for a long time, to wit, for the space of forty days then next following.

Special Count for the use of a way to pay so much, &c. and to make amends for damages. See Special Assumpsit, concerning sale, use, &c. of lands.

FOR that whereas the said defendant at the time of making the promise and undertaking of the said defendant, hereafter next mentioned, was possessed of divers large quantities of timber, wood, and bark, then lying in the parish of D in the county aforesaid; and so being thereof possessed, on the first of October, A. D. 1755, at the parish aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would permit the said defendant by himself and several other persons, with cattle and carriages, to carry and convey the said timber, wood, and bark from the said places where the same so then were, unto, through, over, and along certain closes and parcels of land of the said plaintiff, lying and being in the said parish and county, unto a certain river, called A. otherwise B. river, otherwise the side of B. river, in the said county, he the said defendant undertook, and then and there faithfully promised the said plaintiff, not only to pay him so much money as he the said plaintiff should therefore reasonably deserve to have, but also to render him full satisfaction and amends for all such damage as should be thereby done to the said plaintiff in his said closes and parcels of land. [Averment that plaintiff confiding, &c. did permit, and that the defendant did accordingly fetch, &c. and that the plaintiff reasonably deserved to have other forty pounds, and that in the said carriage, &c. there was damage done to the plaintiff in his closes and parcels of lands to the value of forty shillings, to wit, at the parish aforesaid, whereof the said defendant had notice. Assign a breach for neither paying the forty shillings, nor rendering full nor any other satisfaction or amends for the said damages.] Second Count as the first, only for the damages. Third Count like the first, only for the quantum meruit. Fourth Count indebted in forty pounds for the use and occupation of a certain way or passage for divers cattle, waggons, and other carriages loaded with timber, wood, and bark, in, through, over, and along certain closes of the said plaintiff, lying and being in the parish of, &c. before then had, used, occupied, possessed, and enjoyed by the said defendant, and at his request, by the permission of the said plaintiff, for a long time, to wit, for the space of one hundred days then elapsed; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant,

General *indebitatus assumpsit* for the use of a way.

Quantum meruit

dant,

dant, had before that time permitted the said defendant, by himself and his servants, and other persons, and with cattle, waggons, and other carriages, to fetch, draw, take, and carry away divers large quantities of timber, wood, and bark, through, over, and along certain other closes and parcels of land of the said plaintiff, lying and being in the parish of, &c. aforesaid, and that the said defendant had accordingly, by the said permission of the said plaintiff, by himself the said defendant, and by his servants, and divers other persons, and with cattle, waggons, and other carriages, fetched, drawed, carried, took, and carried away the said timber, wood, and bark, through, over, and along the said last mentioned closes and parcels of land of the said plaintiff, he the said defendant undertook, &c. to pay him so much as, &c. and the said plaintiff avers that, &c. [See beginnings and endings of Declarations.]

For tonnage.

FOR the tonnage of divers goods, wares, and merchandizes of the said defendant, by him the said defendant before that time navigated, carried, and conveyed upon divers parts of a certain navigable cut or canal, navigable and passable from the river Trent to the river Mersey, in certain boats, barges, and other vessels, for the said defendant, and at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said plaintiff had before that time, at the like special instance and request of him the said defendant, navigated, carried, and conveyed divers other goods, wares, and merchandizes of him the said defendant, upon divers parts of the said cut or canal, in certain other boats, &c. for him the said defendant, he the said defendant undertook, &c. to pay him the said plaintiff so much money as he reasonably deserved to have for the tonnage thereof, when he the said defendant should be thereto afterwards requested; and the said plaintiff avers that he, &c. [See beginnings of and conclusions to Declarations.]

Quantum meruit.

For a crop of sheep-cabbage.

FOR a certain crop of sheep cabbage of the said plaintiff, before that time growing and being in a certain close of the said plaintiff, and sold by him the said plaintiff to the said defendant, and by him the said defendant, according to that sale, gathered, taken, had, and received, and at his special instance and request, and being so indebted, &c. [See beginnings and conclusions, &c.]

Quantum meruit.

And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, had before that time sold to the said defendant a certain other crop of sheep-cabbage of the said plaintiff, then growing and being in a certain other close of him the said plaintiff, and that the said defendant had, according to that sale, gathered, took, had, and received the same, he the said defendant undertook, &c. to pay him so much, as, &c.; and the said plaintiff avers that, &c. Add indebitatus assumpsit and quantum meruit for the agistment of cattle, and indebitatus assumpsit and quantum meruit for the use and occupation of ten acres of

of land, sown with sheep-cabbage, and indebitatus assumpsit and quantum meruit for goods sold and delivered. [For these Counts see Morgan's Va. Me. Impey's Mod. Pl. and Richardson's Practice in B. R. and C. B.]

For the fees of a sexton for burial.

FOR that whereas the said plaintiff, on, &c. and for a long time, to wit, for the space of three years then elapsed, was, and from thence hitherto hath been, and still is, sexton of the parish of, &c. and as such sexton of the said parish during all the time aforesaid was, and still is, entitled to have, take, and receive all and singular the *fees* due and of right payable to the sexton of the said parish church on the burial and interment of the corpse of every person from time to time during the time aforesaid buried and interred in the said parish church of, &c. and in the church-yard of the said parish, or in either of them: and whereas the said defendant, whilst he the said plaintiff so was sexton of the said parish as aforesaid, to wit, on, &c. aforesaid, at the parish aforesaid, was indebted to the said plaintiff in the sum of forty shillings for his fees before then due and of right payable to him the said plaintiff, as sexton of the said parish, on the burial and interment of the corpse of one A. B. before then, and during the time that the said plaintiff was so sexton of the said parish, buried and interred in the church-yard of the said parish; and being so indebted, &c. Indebitatus assumpsit and quantum meruit for work and labour. [See Morgan's Va. Me.]

For cattle sold to defendant, and delivered to several other persons at defendant's request

FOR divers cattle before then sold to the said defendant, and by virtue of that sale delivered to one A. G. at the special instance and request of the said defendant, and for divers other cattle, &c. before then sold, &c. to the said defendant, and by virtue of that sale delivered to one J. C. at the like special instance, &c. of the said defendant, and for divers other, &c. &c. Quantum meruit accordingly; for which see Morg. &c. and beginnings and endings under that head.

General *indebitatus assumpsit* against the *husband of a ship* for repairing the same.

FOR that whereas the said defendant, on, &c. at, &c. as husband of a certain ship called the Ranger, was indebted to the said plaintiff in one hundred pounds of lawful, &c. for the work and labour, &c. of the said plaintiff, by the said plaintiff before that time done and performed by himself and his servants, in and about the repairing and fitting out the said ship, whereof the said defendant so was husband, at the special instance, &c. of the said defendant, and on his retainer, and for divers materials and other necessary things used and applied in and about that work and labour, before then found and provided by the said plaintiff, at the like special instance, &c. of the said defendant; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c.

Quantum meruit.

&c. of the ſaid defendant, as huſband of the ſaid ſhip, and on his retainer, had before that time done and performed other his work and labour by himſelf and his ſervants, in and about the repairing and fitting out of the ſaid ſhip, whereof the ſaid defendant ſo was huſband, and had found and provided divers other materials and neceſſary things uſed and applied in and about that work and labour, he the ſaid defendant undertook, &c. to pay him ſo much as, &c. ; and the ſaid plaintiff avers that, &c.

For a paſſage from Jamaica to London.

Quantum meruit.

FOR the carrying, tranſporting, and conveying of the ſaid defendant from parts beyond the ſeas, to wit, from Jamaica in the Weſt Indies to London, in a certain ſhip or veſſel called the Wilkes and Liberty, whereof the ſaid plaintiff was then and there the maſter and commander, at the ſpecial inſtance and requeſt, &c.; and being ſo indebted, &c. And whereas, in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid defendant, had before that time carried, tranſported, and conveyed, &c. &c. he the ſaid defendant undertook, &c. &c. to pay him ſo much money as, &c. ; and the ſaid plaintiff avers that, &c.
Third and fourth counts, for meat, drink, lodging, &c.
Fifth and ſixth counts, work and labour by himſelf and his ſervants.
Seventh and eighth counts, goods ſold and delivered.
Ninth and tenth counts, money laid out ; account ſtated ; and common concluſion.

For theſe Counts ſee Morgan's V. M. and beginnings and endings, &c. of Declarations, &c. in this work.

Indebitatus aſſumpſit againſt the collector of cuſtoms for *ſalvage*, with Mr. Serjeant Bootle's Opinion.

FOR that whereas, on eighth December, A. D. 1744, a certain ſhip, called the Lonſdale of Whitehaven, whereof one Richard Bevan was then maſter, and then loaded with divers goods and merchandizes, was forced on ſhore and ſtranded on the ſea-coaſt of this kingdom, at or near a certain place called End Foſt, in the pariſh of St. Bees, within the juriſdiction of the port of Whitehaven, in the county of Cumberland ; and the ſaid defendant then was, and ſtill is, the collector of his majeſty's cuſtoms in the port of Whitehaven : and whereas the ſaid defendant, as collector of the cuſtoms aforeſaid, on the firſt May 1746, at the pariſh of, &c. aforeſaid, in the county aforeſaid, was indebted to the ſaid plaintiff in three hundred and thirty-ſix pounds ſix ſhillings of right due and payable by the ſaid defendant, as collector of the cuſtoms aforeſaid, to the ſaid plaintiff, for the work and labour, care and diligence, of the ſaid plaintiff, before that time done and performed by the ſaid plaintiff in the ſalvage of the ſaid cargo wherewith the ſaid ſhip, ſo forced on ſhore and ſtranded as aforeſaid, at the time of her being ſo forced on ſhore and ſtranded as aforeſaid, was loaden, and in the cuſtody of the ſaid defendant as collector of the cuſtoms

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as aforesaid, and for money by the said plaintiff in that behalf paid, laid out, and expended; which said sum of three hundred and thirty-six pounds six shillings was, after the salvage of the said cargo, allotted and adjudged (a) by Richard Cook, Peter How, and John Bean, esquires, then justices of our lord the now king to keep his majesty's peace in the said county of Cumberland, being neighbouring justices to the said place where the said ship was so forced on shore and stranded as aforesaid, named by the said plaintiff and by the said defendant in that behalf, as a reasonable reward to be paid to the said plaintiff by the said defendant, as collector of the customs aforesaid, for his service in that behalf, by force of and according to the form and effect of the statute in this case lately made and provided. And whereas the said defendant afterwards, to wit, on the first of May 1746 aforesaid, at the parish aforesaid, as collector of the customs aforesaid, was indebted to the said plaintiff in five hundred and fifty-nine pounds six shillings and ninepence for other work and labour, care and diligence, of the said plaintiff, before then done and performed by him, at the instance and request of the said defendant, as collector of the customs aforesaid, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, at the time of her being so forced on shore and stranded as aforesaid, was laden, and for money by the said plaintiff (b), at the like special instance and request of the said defendant, as collector of the customs as aforesaid, in that behalf expended, laid out, and paid; and being so indebted, &c. And whereas afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, as collector of the customs aforesaid, had before that time done, performed and bestowed other his work and labour, care and diligence, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, was loaden, he the said defendant undertook, &c. to pay him the said plaintiff so much money as, &c.; and the said plaintiff avers that, &c. And whereas also the said defendant, as collector of the customs aforesaid, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, was indebted to the said plaintiff in other five hundred and eighty-nine pounds six shillings and ninepence, for money by the said plaintiff before that time laid out and expended, and paid for the said defendant, and at his like special instance and request, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, at the time of her being so forced on shore and stranded as aforesaid, was loaded, and also for money by the said defendant before that time had and received to the use of the said plaintiff; and being so indebted,

The sum allotted and adjudged by the justices.

2d Count, for work and labour.

12. Anne, st. 2, c. 18. s. 2.

Quantum meruit.

3d Count, Money laid out and expended.

(a) The justices in their adjudication do not say that the money shall be paid by the collector, nor does the act say any such thing. The act says, it shall be paid by the owners of the cargo. Now the plaintiff in this case was the owner of the ship and cargo; and this makes the difficulty of the action.

(b) Quære, If plaintiff has at any time claimed the cargo as owner?

Indebted, &c. (Counts for work and labour generally, and a Count for money laid out, &c. Damages 500l.)

Qu. If the owner did not make his claim, but came in as a salver, if he could not recover the sum insured?

The plaintiff is the owner of the goods; and if he made his claim to them, it is he, and not the collector, that is liable to pay the salvage by the act. And I conceive the meaning of the act is, if there is any dispute between the owner and the officer as a salver, then the justices to adjudge the quantum; so that this adjudication of the justices seems not to be in pursuance of the act. As the plaintiff, who is owner, claims the salvage, if the owner does not make his claim within twelve months, then public sale is to be made of the goods. This sale I apprehend the collector is to make, and to pay all costs of salvage. Now it does not appear to me whether the plaintiff has made his claim to the goods, or has entirely waved it, and the collector has proceeded to sale. I should apprehend the collector is the person who is to pay the salvage within the meaning of the act. There are difficulties that occur to me; there wants a further explanation of the facts; and I cannot but say the plaintiff's success in this action is very doubtful.

ED. BOOTLE.

For fees, &c. as packer's porter of aliens goods in London.

WHEREAS the said plaintiff, on the first day of November, A. D. 1780, and before, was, and continually from thence hitherto hath been, and still is, lawfully possessed of and in the office or place of packer's porter or portage of aliens goods within the city of London, and the liberties thereof, with all the duties, fees, profits, perquisites, and advantages thereunto due and of right belonging and appertaining; and by reason thereof, he the said plaintiff, during all the time aforesaid, was lawfully entitled to have, and of right ought to have had, the landing of all goods belonging to any alien or aliens, imported from any place or places in foreign parts beyond the seas into the port of London, in any ship or vessel whatsoever, and to have and receive of and from the importer thereof, for the landing of such goods, certain fees, duties, profits, and advantages due and of right accustomed and belonging to the said office (A); that is to say, the sum of fourpence for every bale of such goods so landed, to wit, at London aforesaid, in the parish of, &c.; and the said plaintiff so being possessed of and in the said place or office in form aforesaid, he the said defendant, during the time aforesaid, to wit, on, &c. imported from abroad in foreign parts beyond the seas, to wit, from L'Orient, into the port of London, certain goods, to wit, *(the quantity)* belonging to a certain alien or certain aliens to the said plaintiff unknown, in a certain ship or vessel called the Patty, to wit, at London aforesaid; and the said plaintiff then and there, in his said place or office of packer's porter or portage of aliens goods within the city of London and liberties, had the landing of the said goods for the said defendant; and accordingly, by himself and his deputies and servants, as such officers, landed the said goods for the said defendant, whereby the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff, the sum of one hundred pounds, being at and after the rate of fourpence for every bale of the said goods so imported by the said defendant as aforesaid, and so landed by the said defendant

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as aforesaid; whereof the said defendant then and there had notice; and being so indebted, &c. (Second Count as the first to the letter A. then proceed as follows): And whereas the said defendant, on the day and year last aforesaid, at, &c. was indebted to the said plaintiff, as such officer as aforesaid, in the further sum of forty pounds, of lawful, &c. for his fees due and of right belonging and payable from the said defendant, *for his landing* of certain goods, to wit, cloth belonging to a certain alien or certain aliens to the said plaintiff unknown, by the said defendant before then imported from abroad and beyond the seas, to wit, from L'Orient into the port of London, in a certain ship or vessel, and there landed by the said plaintiff in his said place or office for the said defendant; and being so indebted, &c. [See beginnings and endings of Declarations postea.]

For *fees* as clerk of the crown of the county-palatine of Lancaster, where defendants were discharged on *nolle prosequi*.

FOR certain fees and sums of money before that time due and owing, and of right payable from the said defendant to the said plaintiff, as (*a*) clerk of the crown in the county palatine of Lancaster, for entering and recording divers proceedings in several suits and prosecutions heretofore depending against the said defendant, on divers informations exhibited against the said defendant, at the general sessions of assizes held in the said county of Lancaster, for certain offences therein alledged to have been committed by the said defendant, and which proceedings were entered and recorded by the said plaintiff, in his said office of clerk of the crown in the aforesaid county-palatine of Lancaster, at the instance and request of the said defendant; and being so indebted, &c. And whereas, in consideration that the said plaintiff had before that time, in his aforesaid office of clerk of the crown, at the special instance and request of the said defendant, entered and recorded divers proceedings in several other prosecutions heretofore depending against the said defendant, at the general sessions and assizes held in the said county palatine of Lancaster, for certain offences therein alledged to have been committed by the said defendant, he the said defendant undertook, &c. to pay him so much, &c.; and the said plaintiff avers that, &c. [See beginnings and endings postea.]

Quantum meruit.

(*a*) The necessary proofs for the plaintiffs are, 1st, the patent by which he holds his office; 2d, the records of *nolle prosequi*; 3d, the application of defendant for *those* nolle prosequi's (*if possible*); 4th, the usage of receiving the fees in question.

For *fees*, &c. as a proctor, for prosecuting an appeal to the high court of delegates.

FOR money by the said plaintiff before that time laid out, expended, and paid for the said defendant as the proctor of the said defendant, and upon his retainer, in prosecuting an appeal from a sentence pronounced by the arches court of the court of Canterbury, to the high court of delegates, to wit, at London aforesaid, in the parish and ward aforesaid, and for his fees, labour, care, and attendances

attendances in prosecuting the same, and also for the work and labour, care and diligence of the said plaintiff before that time done, performed, and bestowed in and about other the business of the said defendant, and for the said defendant, and at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, and upon his retainer, had before that time laid out and expended divers other sums of money, in and about the prosecuting of a certain other appeal from a sentence pronounced by the arches court of the said court of Canterbury to the said high court of delegates, and had also, at the like special instance and request of the said defendant, done, performed, and bestowed other his work and labour, care and diligence, as such proctor of the said defendant, in and about other the business of the said defendant, and for the said defendant, he the said defendant undertook and faithfully promised the said plaintiff to pay him all such money as he had so laid out and expended, and also so much money as he for his fees, labour, care, and diligence in the said several last-mentioned particulars therefore reasonably deserved to have, when he the said defendant should be thereto afterwards requested: and the said plaintiff avers, that he so laid out and expended, on the several occasions last aforesaid, a large sum of money, to wit, the sum of forty pounds of lawful, &c. and that he reasonably deserved to have of the said defendant the further sum of twenty pounds of like lawful money, for his fees, labour, care, and diligence in the said several last mentioned particulars, to wit, at, &c. aforesaid. [See beginnings and endings, &c. postea.

Quantum meruit.

For fees as a proctor for entering caveats.

FOR causing caveats to be entered in the prerogative court of Canterbury, the consistory court of Bath and Wells, within this kingdom, to letters of administration to be granted of the goods, rights, and credits of J. W. his then deceased father, by the order and at the special instance and request of the said defendant, and for several sums of money laid out and expended by him the said plaintiff, at the like special instance, &c. of the said defendant before that time; and also for applying before that time to prevent letters of administration of the goods, rights, and credits of the said J. W. to be granted to the then widow and relict of him the said J. W. without him the said defendant being joined with her as administrator of the said goods, rights, and credits, in and by any letters of administration to be then granted thereof; and for divers sums of money at the like special instance, &c. of the said defendant, before that time laid out, expended, and paid for the said defendant by the said plaintiff, and also for divers journies and attendances of the said plaintiff for and upon the said defendant, and at his like special instance, &c. by the said plaintiff before that time done and performed; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, had before that time caused other

Quantum meruit.

other caveats to be entered in the prerogative court of Canterbury, and the consistory court of Bath and Wells, to letters of administration to be granted of the goods, rights, and credits of the said J. W. and had done and performed other journies, attendances, care, work, and labour for the said defendant, and at his like special instance, &c. and had also laid out and expended for the said defendant, and at his request, divers other sums of money, and had applied to prevent the said last mentioned letters of administration to be granted of the goods, rights, and credits of the said J. W. to the then widow and relict of the said J. W. without him the said defendant being joined with her as administrator of the same goods, rights, and credits, by any letters of administration then to be granted, he the said defendant undertook, &c. to pay him not only as much money as he the said plaintiff, for and about the said caveats, attendances, journies, care, work, and labour, reasonably deserved to have, but also as much money as the said plaintiff, in and about the same caveats, journies, attendances, care, work, and labour, had expended and laid out, when he the said defendant should be thereto afterwards requested: and the said plaintiff in fact saith, that for and about the said caveats, journies, attendances, care, work, and labour, he reasonably deserved to have the further sum of ten pounds of lawful, &c. to wit, at, &c. aforesaid; and that in and about the caveats, journies, attendances, and work and labour last mentioned, he the said plaintiff paid, laid out, and expended, the further sum of ten pounds of like lawful, &c. to wit, at, &c. aforesaid; of all which said premises the said defendant then and there had notice.

FOR certain premiums of insurance before that time and then due and payable from the said defendant to the said plaintiff, for and in respect of his having, at the special instance and request of the said defendant, before that time in due manner insured certain sums of money for the said defendant, upon divers goods, wares, and merchandizes of the said defendant, before then laden and put on board of certain ships and vessels; and being so indebted, &c. Assumpsit accordingly. [See beginnings, &c. post.] For insurance premiums.

AND whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county aforesaid, was indebted to the said plaintiffs in (other) one hundred pounds of *like* lawful money, for certain commission and reward then and there due and payable from the said defendant to the said plaintiffs, for and on the negociation of divers large sums of money before that time effected, negociated, and completed by the said plaintiffs, as the agents of the said defendants in that particular, and after their services in and about the business of the said defendant, and for the said defendant, and at his like special instance and request; and being so indebted, he the said defendant, A count in a declaration for commission on negociating money, and on agency.

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in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said *last-mentioned* sum of money, when he the said defendant should be thereto afterwards requested. [See beginnings and endings of Declarations.]

If only one Count, omit the words in italic in this and the next Count.

Count in *indebitatus assumpsit* for interest for money lent.

AND whereas the said defendant was indebted to the said plaintiff in *other* ten pounds of *like* lawful, &c. for lawful interest at the rate of five pounds per cent per annum, before that time due, owing and payable by the said defendant to the said plaintiff, upon certain sums of money by the said plaintiff before that time lent and advanced to and for the said defendant, and at his special instance, &c. and upon certain other sums of money before that time had and received by the said defendant to the use of the said plaintiff; and being so indebted, &c.

Some doubts have been entertained of the goodness of the Count, but as I cannot see much weight in the objections to it, and as it may be a question whether the subject matter of it may be given in evidence under any of the common Counts, it is proper to risk it. V. LAWES.

Mr. Justice Buller, in deciding a case in the court of King's Bench in Hilary Term, said that this Count could not be maintained. (1)

(1) vid. Tamen [illegible] R, [illegible].

Indebitatus assumpsit in C. B. for a parcel of tea, with an allowance of a discount upon prompt payment.

LONDON, *ss.* William Sandys, late of London, tea-merchant, and Peter Berry, late of West Smithfield, in the county of Middlesex, grocer, were attached to answer to William Hoppes of a plea of trespass on the case; and thereupon the said William Hoppes, by Matthew Robinson his attorney, declares, that whereas the said William Sandys and Peter Berry, on the twenty-third day of June 1741, at London, to wit, at the parish of St. Mary le Bow, in the ward of Cheap, were indebted to the said William Hoppes in one thousand and forty-six pounds ten shillings and nine pence of lawful money of Great Britain, for two thousand nine hundred and ninety pounds weight and one quarter of a pound weight of tea before that time sold by the said William Hoppes to the said William Sandys and Peter Berry, at their special instance and request; and being so indebted for the same, they the said William Sandys and Peter B. in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, &c. undertook, and then and there faithfully promised the said William Hoppes, to pay him the said one thousand and forty-six pounds ten shillings and nine-pence, when they should be thereto required. And whereas also the said W. H. afterwards, to wit, on the same day and year, at London, &c. had, at the special instance and request of the said W. S. and P. B. sold to the said W. S. and P. B. four lots of other tea, containing in the whole two thousand and ninety pounds weight and one quarter of a pound weight

Tea sold, 1st Count.

2d Count, for the discount.

weight of tea, at the rate of seven shillings for every pound weight of tea, and so in proportion the same for the lesser quantity, amounting in the whole to the sum of one thousand and forty-six pounds eleven shillings and nine pence of lawful money, to be paid to the said W. H. by the said W. S. and P. B. of which one shilling, part thereof, was then and there in hand paid to the said W. H. he the said W. H. then and there agreeing to allow to the said W. S. and P. B. a discount of six pounds ten shillings by the hundred pounds out of the said sum for prompt payment, amounting in the whole to sixty-eight pounds and two pence, if the said W. S. and P. B. should pay the said W. H. nine hundred and seventy-eight pounds ten shillings and seven pence of like lawful money, before the twenty-third day of March then next ensuing: the said W. S. and P. B. in consideration thereof, afterwards, to wit, on the said twenty-third day of January in the year aforesaid, at London, &c. undertook, and then and there faithfully promised the said W. H. to pay him the said nine hundred and seventy-eight pounds ten shillings and seven pence of like lawful money before the twenty-third day of March then next ensuing; and in case that they the said William Sandys and P. B. should not pay the said William Hoppes the said nine hundred and seventy-eight pounds ten shillings and nine pence before the said twenty-third day of March then next ensuing, that then they the said William S. and P. B. would, after the said twenty-third day of March, pay to the said William H. the said one thousand and forty-six pounds ten shillings and nine pence of like lawful money, residue of the said one thousand and forty-six pounds eleven shillings and nine pence, when they should be thereto required. And whereas also the said W. S. and P. B. afterwards, to wit, the day and year aforesaid, at London, &c. accounted with the said W. H. of and concerning divers sums of money before that time due and owing by the said W. S. and P. B. and then in arrear to the said W. H. and on that account the said W. S. and P. B. were then found in arrear to the said W. H. in the other sum of one thousand and forty-six pounds ten shillings and nine pence of like lawful money; and being so in arrear, the said W. S. and P. B. in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, &c. undertook, and then and there faithfully promised the said W. H. to pay him the said last mentioned one thousand and forty-six pounds ten shillings and nine pence, when they should thereto be required: yet, &c. [See conclusions to Declarations post.]

Account stated.

Breach.

J. B. complains of J. A. for that whereas one A. A. in her life-time, now deceased, before and on the seventeenth day of September, A. D. 1783, at Westminster, in the county of Middlesex, was seised in his demesne as of fee of and in the several messuages or tenements, farms, lands, and premises hereinafter mentioned; and being so thereof seised, she the said A. A. in her life-time, to wit, on,

Declaration in *indebitatus assumpsit* for arrears of an annuity charged by will upon testator's freehold estates, and devised to defendant.

on, &c. at, &c. duly made and published her last will and testament, and thereby (amongst other things) then and there gave and bequeathed all those several messuages, tenements, and farms, called Brick-house farm and East-field farm, with the several lands, closes, parcels of ground, and hereditaments and premises, with the appurtenances, situate, standing, lying, and being at S. in the north riding of the county of York, then in the several occupations of J. B. and R. A. together with the tithe-corn and other tithes growing or arising upon or without the two said several farms, or any modus for the same, and all other the real estates, of whatsoever nature or tenure soever the same might be, lying or being in the several counties of York, Durham, or either of them, unto and to the use of the said James and his assigns, for and during the term of his natural life, without impeachment of waste; and the said A. A. in her life-time then and there gave unto the said John one annuity or yearly sum of fifty pounds, for and during the term of his natural life; which said annuity the said A. A. in her life-time thereby then and there willed and directed should be paid by half-yearly payments, that is to say, on the twenty-ninth day of September and the twenty-fifth day of March, and directed the first payment thereof to begin and be made at such of the said two several days as should first happen next after her decease, and to be paid out of the rents and profits of the said freehold messuages, lands, farms, and tenements lying and being at S. aforesaid: and the said John in fact saith, that the said Ann A. being so seised of the said several messuages or tenements, farms, lands, and premises, afterwards, on the fourteenth day of November, A. D. 1785, at Westminster aforesaid, in the county aforesaid, died so seised thereof, without revoking or altering her said will; after whose death, to wit, on, &c. the said James entered into and upon all and singular the said messuages or tenements, farms, lands, and premises, and became and was, and from thence hitherto hath been, and still is, thereof seised for the term of his natural life, to wit, at, &c. aforesaid: and the said John in fact further saith, that after the death of the said Ann A. to wit, on the twelfth day of May, A. D. 1789, at, &c. aforesaid, a large sum of money, to wit, the sum of one hundred and twenty-five pounds of lawful, &c. of the said annuity or yearly sum of fifty pounds for two years and one half of another year then elapsed, became and was due and payable from the said James to the said John, whereof the said James then and there had notice; and by means of the several premises aforesaid, he the said James then and there became liable to pay to the said John the said sum of one hundred and twenty-five pounds, when he the said James should be thereto afterwards requested. And whereas the said James afterwards, to wit, on the second day of November, A. D. 1785 aforesaid, at, &c. aforesaid, was indebted unto the said John in the sum of one hundred and fifty pounds of lawful, &c. for money by the said James before that time had and received to the use of the said John; and being

so

ſo indebted, &c. (add common concluſions.) [See beginnings and concluſions to Declarations poſt.] to the damage of the ſaid John of one hundred and fifty pounds; and thereupon he brings his ſuit, &c. Pledges, &c. See 2. Salk. 415. 3. Salk. 227. 415. 1. Sid. 46. Ld. Raym. 934. 6. Mod. 25, 26.

Declaration in indebitatus aſſumpſit in the marſhalſea court, for money had and received by a member of an amicable ſociety of tradeſmen, againſt the ſtewards for his allowance as ſick member; and Opinion how far the action can be ſupported.

PALACE COURT, to wit. Thomas Blundell, by Edward Lawes his attorney, complains againſt Robert King, Robert Auberry, William Wintlett, and William Wood, in a plea of treſpaſs on the caſe, &c. for that whereas the ſaid defendants heretofore, to wit, on the firſt day of November, in the year of Our Lord 1791, at Southwark, in the county of Surrey, and within the juriſdiction of this court, were indebted to the ſaid Thomas in twenty pounds of lawful money of Great Britain, for money by the ſaid defendants before that time there had and received to and for the uſe of the ſaid plaintiff; and being ſo indebted, they the ſaid defendants, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at Southwark aforeſaid, in the county and juriſdiction aforeſaid, undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay him the ſaid ſum of money, when they the ſaid defendants ſhould be thereto afterwards requeſted; yet the ſaid defendants, not regarding their ſaid promiſe and undertaking ſo by them made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid plaintiff in this behalf, have not, nor have any of them as yet paid the ſaid ſum of money, or any part thereof, to the ſaid plaintiff, (although ſo to do the ſaid defendants were requeſted by the ſaid plaintiff afterwards, to wit, on the day and year aforeſaid, and often afterwards, to wit, at S. aforeſaid, in the county and juriſdiction aforeſaid,) but they ſo to do have reſpectively hitherto wholly refuſed, and ſtill do refuſe, to the damage of the ſaid plaintiff of ninety-nine ſhillings; and therefore he brings his ſuit, &c.: and the ſaid Thomas avers, that neither he nor the ſaid defendants were, nor was any or either of them, at the time of the levying of the plaint of the ſaid plaintiff here in court, nor are they, nor is either or any of them, now of the king's houſehold. Pledges, &c.

I Think there is a clear objection to this action, if the defendants ſhould take it at the trial; and that is, that all the members of the ſociety are made partners by the articles, by which each is individually entitled to the whole fund, not in ſhares, but in entireties; of courſe, no one can maintain an action againſt another for any ſeparate part of ſuch fund. In the caſe of Holliday againſt Camwell and White, 1, T. Rep. 658, where trover was brought againſt one of the defendants, a member of the club, who had got poſſeſſion of the club-box, and delivered it to the other, not a member, the plaintiff was non-ſuited upon this diſtinction. In a ſimilar caſe to the preſent, an action for money had and received was at iſſue before Lord Mansfield, and he refuſed to try it for the ſame reaſon; and added, that the Court would not make itſelf viſitor-general to all the clubs in the kingdom. Perhaps in the marſhalſea the objection may not be taken; I have therefore declared for money had and received, under which form of action the right may be tried, either to recover plaintiff's allowance under the articles, or at leaſt his ſubſcription back again on his being ſtruck off.

THO. BARROW.

Declaration in county court of Lancaster, in *Indebitatus assumpsit*, for the use of plaintiff's bull in bulling defendant's cows.

LANCASHIRE, *ss.* That whereas the said Thomas, on the first day of October, in the year of Our Lord 1774, at P. in the said county, and within the jurisdiction, &c. was indebted to the said John in thirty-nine shillings of lawful money of Great Britain, for the use of a certain bull of the said J. then before that time had and used by the said Thomas, by the permission of the said John, at the special instance and request of the said Thomas, in the covering and bulling of certain cows of the said Thomas; and being so indebted, the said Thomas, in consideration thereof, afterwards, to wit, &c. (common Assumpsit.) And whereas also the said Thomas afterwards, to wit, on the same day and year last mentioned, at P. aforesaid, and within, &c. in consideration that the said J. at the special instance and request of the said Thomas, had before that time permitted the said Thomas to use a certain other bull of the said J. in covering and bulling certain other cows of the said T. and by the permission of the said J. the said bull of the said J. had then before that time covered and bulled the said cows of the said Thomas, he the said Thomas undertook, and then and there faithfully promised, to pay the said J. so much money as he reasonably deserved to have for the same, when he should be thereto afterwards requested; and the said J. in fact saith, that he reasonably deserved to have for the same other thirty-nine shillings of like lawful money, to wit, at Preston aforesaid, and within, &c. whereof the said T. then and there had notice; nevertheless, &c. [See beginnings and conclusions to Declarations.] J. WALLACE.

Quantum meruit.

Declaration in assumpsit against baron and feme sued as executor and executrix, where the feme being widow of the intestate, is only liable as executrix de son tort.

LANCASHIRE, to wit. Robert Tate complains of Matthew Crompton and Nancy, otherwise Anne, his wife, executrix of the last will and testament of William M'Keand deceased, being, &c. for that whereas the said William M'Keand heretofore, in his life-time, to wit, on, &c. at, &c. was indebted, &c. (for goods sold and delivered, and common money Counts.)

Plea.

And the said Matthew and Nancy, otherwise Anne, by Joseph Allen their attorney, come and defend the wrong and injury when, &c. and say, that the said Robert ought not to have or maintain his aforesaid action thereof against them; because they say, that they are not, nor ever were, executor and executrix of the last will and testament of the said William deceased, nor ever administered any goods or chattels which were of the said William at the time of his death, as executor and executrix of the last will and testament of the said William deceased; and this they are ready to verify; wherefore they pray judgment if the said Robert ought to have so maintained his aforesaid action thereof against them, &c. And for further plea, &c. (2d plea *plene administravit.*) GEO. WOOD.

Replication

And the said Robert, as to the said plea of the said Matthew and Nancy by them first above pleaded in bar, says, that he the said Robert ought not, by reason of any thing in that plea alleged, to be barred from having and maintaining his aforesaid action thereof against

against the said Matthew and Nancy, because he says that the said Nancy, at the time of the exhibiting of the bill of the said Robert, was, and from thence hitherto hath been, and still is, executrix of the last will and testament of the said William deceased, and hath administered divers goods and chattels which were of the said William at the time of his death, as executrix of the last will and testament of the said William, to wit, at P. aforesaid, in the county aforesaid; and this the said Robert prays may be inquired of by the country. And the said Robert, as to the said plea of the said Matthew and N. by them lastly above pleaded in bar, says, that inasmuch as he the said Robert cannot deny the several matters therein contained, but admits the same to be true, and inasmuch as the said M. and N. have in and by their said plea admitted the said several promises of the said William M'Keand in the said declaration mentioned, he the said Robert prays judgment, and his damages by him sustained by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him of the goods and chattels of the said William deceased at the time of his death, and which shall hereafter come to the hands of the said N. to be administered.

praying judgment of assets *in futuro.*

THO. BARROW.

I Have replied to the defendants' pleas as desired, but I must own I cannot help entertaining serious doubts of the plaintiff's case in its present form.

It does not appear to me to have been well considered when the suit was instituted, whether the defendant Matthew C. might not have been sued alone without his wife, as executor de son tort. I have desired to see the instructions for declaration, but they do not state with sufficient precision whether the *husband, after marrying M'Keand,* the intestate s widow, intermeddled with his assets and paid debts, or whether such intermeddling was *by his wife during her widowhood.* If evidence can be shewn of the husband's intermeddling, I think he ought to have been sued alone; and if his wife only intermeddled before she married, it seems to me, that though such intermeddling might be a sufficient reason for charging her in an action, yet this action is improperly conceived. In the former case, the husband ought to be sued alone without the wife; in the latter, *if* the husband must be sued for conformity, he ought not to be named executor.

Under these circumstances, I advise to ascertain the real facts of the case, and as they appear to be, try the effect of a summons before a judge to amend the declaration if it can be done, otherwise the plaintiff must begin *de novo.*

THOMAS BARROW.

1. Roll. Abr. 660. 665. l. 37. Com. Dig. Baron and Feme (Q.)

AND whereas afterwards, to wit, on the day of in the year 1774, at Maidstone in the county of K. in consideration that the said Michael, at the special instance and request of the said Henry, had lent and delivered to the said Henry a certain cock of him the said Michael, to be kept and used by the said Henry, for so long a time as he the said Michael should please, he the said Henry undertook, and then and there faithfully promised the said Michael, to deliver the said last mentioned cock back again to him the said Michael, whenever he the said Henry should be thereunto requested; and the said Michael avers, that he afterwards, to wit, on the

Declaration in *indebitatus assumpsit* general, for game cocks let to hire.

the first day of January, in the year of Our Lord 1776, did request the said Henry to deliver the said cock back again to him the said Michael, according to his said promise, to wit, at Maidstone aforesaid, in the county aforesaid; yet the said Henry, not regarding his said promise and undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Michael in this behalf, did not, when he was so thereunto requested as aforesaid, deliver back to the said Michael the said cock so lent and delivered as aforesaid; but to do this he the said Henry then and there, and always hitherto hath, wholly refused, and still refuses. And whereas also, the said Henry afterwards, to wit, on the same day and year last aforesaid, at M. aforesaid, in the county aforesaid, was indebted to the said Michael in the sum of ten pounds, for the use and hire of certain game cocks of him the said Michael, before that time let to hire by the said Michael to the said Henry, at his special instance and request, and by the said Henry accordingly kept and used for a long space of time, to wit, for the space of two whole years then elapsed; and being so indebted, he the said Henry, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at M. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said Michael to pay him the said last mentioned sum of money, when he the said Henry should be thereunto requested. And whereas afterwards, to wit, on the same day and year last aforesaid, at M. aforesaid, in the county aforesaid, in consideration that the said Michael had before that time, at the like special instance and request of the said Henry, let to hire to the said Henry divers other game cocks of the said Michael, and the said Henry, according to that letting, had kept and used the said last mentioned game cocks for a long time, to wit, for the space of other two whole years then elapsed he the said H. undertook, and then and there faithfully promised the said M. to pay him so much money as he therefore reasonably deserved to have, when he the said H. should be thereunto requested: and the said Michael avers that he therefore reasonably deserved to have other ten pounds of like lawful money, to wit, at Maidstone aforesaid, in the county aforesaid, when he the said Henry afterwards, to wit, on the same day and year last aforesaid, there had notice. (Counts for money laid out and expended, lent and advanced, had and received; common conclusion.)

Second Count, other game cocks.

Quantum meruit.

Geo. Wood.

General indebitatus assumpsit by an attorney against a prisoner in custody of the sheriff, for business done in B. R. Suits carried on,

CUMBERLAND, *ss.* John King, gentleman, one of the attornies of the court of the lord the king, before the king himself, according to the liberties and privileges of the same court, used and approved of in the same from time whereof the memory of man is not to the contrary, present herein court in his proper person, complains against John Swarbrick, in the custody of the sheriff of the said county of Cumberland, by virtue of his majesty's writ of attachment of privilege issuing out of the court of the said

said lord the king, before the king himself at Westminster, against the said John Swarbrick, at the suit of the said John King; for that whereas the said J. S. on the twenty-fifth of June, A. D. 1760, at Whitehaven in the said county, was indebted to the said J. K. in twenty pounds of lawful, &c. for prosecuting, soliciting, and defending divers (a) suits, causes, matters, and things for the said J. S. at his special instance and request, and for his fees due thereon, and for the time, care, trouble, labour, pains, journies, and attendances of the said J. K. spent, taken, used, performed, and bestowed by him, in and about the said suits, causes, matters, and things, at the special instance and request of the said J. S and for divers sums of money laid out, expended, and paid by the said J. K. at the like special instance and request of the said J. S. and in and about the prosecuting, soliciting, and defending the said suits, causes, matters, and things; and being so indebted, the said J. S. in consideration thereof, afterwards, to wit, on the same day and year above mentioned, at Whitehaven aforesaid, undertook, and then and there faithfully promised that he the said J. S. would well and truly pay the said twenty pounds to the said J. K. when he the said J. S. should be afterwards thereunto requested. (Quantum meruit, and common conclusion to both Counts.)

(a) Or in defending and prosecuting of a certain criminal prosecution, before that time commenced against the said defendant, as the case is.

MIDDLESEX, *ss.* Christopher Hall the elder and Christopher Hall the younger complain against George Munk, gentleman, one of the attornies of the court of our sovereign lord the king, before the king himself present here in court in his own proper person; for that whereas the said George, on the first of September, A. D. 1782, at Westminster, in the said county of M. was indebted to the said C. H. the elder and C. H. the younger (the said C. H. the elder then and long before, and still, being *one of the attornies of the court of our sovereign lord the king of the bench*, and the said C. H. the younger then and long before, and still, being *one of the attornies of the court of our said lord the king, before the king himself*, and the said C. H. the elder and C. H. the younger then and long before, and still, being *joint-partners* together in the business and profession of attornies as aforesaid) in the sum of one hundred pounds of lawful, &c. for so much money by the said C. H. the elder and C. H. the younger before that time paid, laid out, and expended as *agents*, solicitors, and attornies of and for the said George, upon his *retainer*, and at his special instance and request, in prosecuting, defending, and transacting divers causes, suits, and businesses in this court here, and other his majesty's courts of record here at Westminster, and for their fees and labour, care and attendance in and about the prosecuting, defending, and transacting these causes, suits, and businesses,

General *indebitatus assumpsit* by two attornies *partners*, one an attorney of B R. the other of C. B, for business as agents against an attorney of B. R. where suits were carried on.

nesses, at the like special instance and request of the said George; and being so indebted, he the said George, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, undertook, and to the said C. H. the elder and C. H. the younger then and there faithfully promised to pay to them the said sum of money, whenever the said George should be thereto afterwards requested. (Counts on quantum meruit, and for fifty pounds laid out, &c. a Count more general for work and labour, &c. and quantum meruit; money had and received; account stated; common conclusion.)

General *indebitatus assumpsit* by *administratrix*, widow to a *serjeant at mace* to the sheriffs of London, for *fees* against *an attorney of B. R. surviving partner* of another attorney, for the executing writs, &c.

LONDON, *ss.* A. H. widow, administratrix of all and singular the goods and chattels, rights and credits which were of J. H. her late husband deceased, who died intestate, complains of E. D. gentleman, one of the attornies of the court of our said lord the king, before the king himself present here in court in his proper person; for that whereas the said E. and one R. A. deceased, whom the said E. hath *survived*, in his lifetime, being attornies and *partners* together, on, &c. at, &c. were indebted to the said J. H. deceased, in his lifetime, in the sum of twenty pounds of lawful, &c. for divers *fees* before that time due and payable to the said J. H. deceased, in his lifetime, as *serjeant at mace* to the sheriffs of the city of L. aforesaid, from the said E. and R. A. since deceased, in his lifetime, as such attornies and joint-partners as aforesaid, upon the executing divers writs and processes within the said city of L. aforesaid, of and for the said E. and R. A. deceased, in his lifetime, as serjeant at mace to the sheriffs of the city of L. aforesaid, at the special instance and request of the said E. and R. A. deceased, in his lifetime; and being so indebted, &c. (assumpserunt). And whereas, &c. [2d Count for work and labour, journies and attendances, and quantum meruit; add also the money Counts, and conclude thus:] Yet the said E. D. and R. A. deceased, in the lifetime of the said R. A. and the said E. since the decease of the said R. A. not regarding, &c. but contriving, &c. to deceive and defraud the said J. H. deceased, in his lifetime, and the said plaintiff, administratrix as aforesaid, since his decease, in this behalf did not, nor did either of them, in the lifetime of the said R. A. deceased, pay, nor hath he the said E. paid the said several sums of money, or any or either of them, or any part thereof, to the said J. H. deceased, in his lifetime, nor the said Ann, as administratrix as aforesaid, since his decease, (to which said A. H. administration of, &c. which were of the said J. H. deceased, who died intestate on, &c. by A. B. by divine Providence archbishop of C. to whom the granting of administration in that behalf belonged, was in due form of law committed,) although so to do they the said E. and R. A. since deceased, in his lifetime, and the said E. since the decease of the said R. A. were, and each of them was, requested by the said J. H. since deceased, in his lifetime, and by the said Anne since his decease; but to pay the same, or any part thereof, have, and each

each of them hath hitherto wholly refused, and to pay the same to the said Anne, as administratrix as aforesaid, he the said E. as such *survivor* as aforesaid, still doth refuse, to the damage of the said Anne of fifty pounds; and therefore she prays relief, &c. (Profert of letters testamentary).

Drawn by MR. GRAHAM.

For attending before a committee of the house of commons upon defendant's business.

FOR that whereas the said defendant, on the first of December 1781, at, &c. was indebted to the said plaintiff in the sum of, &c. for divers journies before that time had and taken by the said plaintiff for the said defendant, in and about the business of the said defendant, at his special instance and request, and for divers attendances of the said plaintiff by the said plaintiff before that time had and made, upon and before *a committee of the house of commons*, for the said defendant, in and about the business of the said defendant, and at his like special instance and request: and being so indebted, &c. And whereas also afterwards, to wit, on, &c. at, &c in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time taken divers journies for the said defendant in and about the business of the said defendant, and had also had and made divers attendances upon and before the committee of the house of commons for the said defendant, in and about the business of the said defendant, at his like instance and request; he the said defendant assumpsit, &c.

Quantum meruit.

W. BALDWIN.

Against the master of a boarding school for not paying for the *hair dressing* of his scholars, &c.

MIDDLESEX, *ss.* Patrick Lawler complains of George Lovelace, being, &c. for that whereas the said George heretofore, to wit, on, &c. at, &c. was indebted to the said Patrick in the sum of fifty pounds of lawful, &c. for the work and labour, care and diligence, skill and attendance of the said Patrick as a *hair dresser*, by him the said Patrick and his servants before that time done, performed, and bestowed in and about the dressing, cutting, and keeping in order the hair as well of him the said George and Elizabeth his wife as of their children, *and divers other infants and children, the scholars* of the said Elizabeth the wife of the said George, then residing and being in the house and under the management and direction of her the said Elizabeth the wife of the said George, as keeper and mistress of a boarding school, and for the said George and at his special instance and request, and for hair powder, pomatum, and perfumes, and other necessary things before that time found, provided, used, and applied by the said Patrick in and about the same work and labour for the said George, and at his like special instance and request; and being so indebted, he the said George, in consideration thereof, afterwards, to wit, on, &c. undertook, &c. (Quantum

meruit &c.

meruit; work and labour, care and diligence; money laid out, &c. had and received; account stated; and common conclusion.)

THO. BARROW.

Declaration at the suit of the owner of a canal for the freight of goods carried from A. to B. by him in his boats.

LANCASHIRE, to wit. The most noble Francis Egerton duke of Bridgewater complains of Samuel Taylor, being, &c. for that whereas the said Samuel on, &c at, &c. was indebted to the said duke in four hundred pounds of lawful, &c. for the freight, carriage, and conveyance of divers goods and chattels, wares and merchandizes of the said Samuel, before that time carried and conveyed by the said duke and his servants, in certain ships, vessels, boats, barges, and troughs of the said duke, in and along certain canals, from Liverpool in the said county of L. to M. and from M. to A. and from and to divers other parts and places, for the said Samuel, at his special instance and request: and being so indebted, &c. (Counts on quantum meruit thereon.)

Præcipe for original against a *peer*, at the suit of a *surviving partner*, for a partnership debt.

MIDDLESEX, *ss.* If J. C. make you secure, &c. then summon, &c. the right honourable Thomas lord viscount M. baron M. of A. in the county of S. having privilege of parliament, that he be before our lord the king on, &c. wheresoever, &c. to shew, for that whereas the said viscount on, &c. at, &c. was indebted unto the said J. C. and one W P. now deceased, in his lifetime, and whom the said J. C. hath *survived*, in one hundred pounds of lawful, &c. for divers goods, wares, and merchandizes by the said J. C. and W. P. in his lifetime, before that time sold and delivered to the said viscount, and at his special instance and request; and being so indebted, the said viscount, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. and W. P. in his lifetime, to pay them the said sum of money when he should be thereto afterwards requested: and whereas (quantum meruit accordingly); and whereas, &c. (money laid out, and conclude thus:) Yet the said viscount hath not as yet paid the said several sums of money, or any part thereof, to the said J. C. and W. P. in his lifetime, or to either of them, or to the said J. C. since the decease of the said W. P. to wit, on, &c. and often, both before and afterwards, to wit, at, &c. but he so to do hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said J. C. to his damage of fifty pounds, as it is said.

Where the damages laid exceed 40l. the following fines are paid to the king: From 40l. to 100 marks, 6s. 8d, from 100 marks to 100l. 10s. 6d.; from 100l. to 200 marks, 13s. 4d.; from 133l. 6s 8d. to 166l. 13s. 4d., 16s. 8d.; from 166l. 13s. 4d. to 200l., 20s.; and for every 100 marks more, 6s. 8d.; and for every 100l. more, 10s. [illegible]

HANTS.

Declaration by a surgeon and apothecary against defendant, who ordered him to attend and administer to a company of soldiers, quartered at plaintiff's town, for not paying him for his attendance and for his medicines.

HANTS, *ss.* E. F. complains against J. V. being, &c. for that whereas the ſaid E. F. before the making of the promiſe and undertaking of the ſaid J. V. hereafter mentioned, to wit, on, &c. and for divers years then laſt paſt, did and ſtill doth uſe, exerciſe, and follow the art and profeſſion of a *ſurgeon and apothecary*, to wit, at, &c. in, &c. and the ſaid E. F. ſo uſing, exerciſing, and following the ſaid art and profeſſion of a ſurgeon and apothecary as aforeſaid, he the ſaid J. V. on, &c. at, &c. in, &c. in conſideration that the ſaid E. F. at the ſpecial inſtance and requeſt of the ſaid J. V. would, as ſuch ſurgeon and apothecary as aforeſaid, attend upon a certain company of ſoldiers, called and known by the name of Captain Saunders's Independent Company, conſiſting of divers, to wit, fifty ſoldiers, (the ſame company being then and there in quarters at the town of B. aforeſaid,) and would endeavour to heal and cure ſuch of the ſaid company of ſoldiers as were then and there labouring and languiſhing with wounds, maladies, and diſeaſes, and would find, provide, apply, and adminiſter to ſuch of the ſaid company ſo labouring and languiſhing as aforeſaid, all neceſſary medicines, plaiſters, drugs, ointments, and other things, in and about the healing and curing the ſaid ſoldiers of the ſaid wounds, diſeaſes, and maladies under which they were ſo labouring and languiſhing as aforeſaid; he the ſaid J. V. undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay and ſatisfy him the ſaid E. F. for his ſaid attendance, and for the ſaid medicines, &c. which he the ſaid E. F. ſhould find, provide, apply, and adminiſter in and about the healing and curing of the ſaid ſoldiers ſo labouring under and languiſhing as aforeſaid, whenever he the ſaid defendant ſhould be thereunto afterwards requeſted; and the ſaid E. F. in fact ſaith, that on, &c. at, &c. in, &c. divers, to wit, twenty of the ſaid company of ſoldiers, were then and there labouring and complaining with divers wounds, &c. and that he the ſaid plaintiff, confiding in the ſaid promiſe and undertaking of the ſaid defendant by him ſo made as aforeſaid, afterwards, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the ſaid plaintiff, he the ſaid plaintiff, as ſuch ſurgeon and apothecary as aforeſaid, did attend on the ſaid company of ſoldiers, and endeavour to heal and cure the ſaid twenty ſoldiers of the ſaid wounds, &c. with which they ſo laboured and languiſhed as aforeſaid; and that he the ſaid E. F. did find and provide for, and apply and adminiſter to the ſaid twenty ſoldiers divers medicines, &c. in and about the healing and curing them of the ſaid wounds, &c. under which they ſo laboured and languiſhed as aforeſaid, to wit, at, &c. in, &c.: and the ſaid E. F. avers, that he reaſonably deſerved to have of and from the ſaid J. V. for the ſaid attendance of the ſaid E. F. as ſuch ſurgeon and apothecary as aforeſaid upon the ſaid company of ſoldiers, and for the healing and curing the ſaid twenty ſoldiers of the ſaid company of the ſaid wounds, &c. under which they ſo laboured and languiſhed, the ſum

sum of fifty pounds of lawful, &c. and the medicines, plasters, &c. found, provided, applied, and administered by the said E. F. in and about the healing and curing of the said twenty soldiers of those wounds, &c. were reasonably worth the sum of other fifty pounds of like lawful money, to wit, at, &c.; of all which said premises he the said defendant afterwards, to wit, on, &c. at, &c. there had notice, and was requested to satisfy to the said plaintiff the said sums of money, according to the promise and undertaking of the said defendant so by him made as aforesaid: and whereas, &c. (common Count for the work and labour, care and diligence of plaintiff, as a surgeon and apothecary, in curing other twenty soldiers at defendant's request, and for medicines, &c.): and whereas, &c. (quantum meruit to that Count): and whereas, &c. (Count for money had and received, and common breach.)

Drawn by Mr. CROMPTON.

Indebitatus assumpsit against an *executor* of an *executrix* of the *survivor* of two persons, joint contractors for cattle sold and delivered.

LONDON, to wit. J. G. late of Potter's Bar in the county of Middlesex, yeoman, executor of the last will and testament of S. C. deceased; [illegible] her life time was sole executrix of the last will and testament of W. R. deceased, was attached to answer unto J. R. in a plea of trespass upon the case, &c.; and thereupon the said J. R. by Thomas Wild his attorney, complains, that whereas the said William and one Ann R. also deceased, whom the said William survived, in the respective lifetimes of the said William and Ann, to wit, on the first day of February, in the year of Our Lord 1786, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, were indebted to the said J. R. in the sum of forty pounds of lawful money of Great Britain, for certain cattle by the said J. R. before that time sold and delivered to the said William and Ann, and at their special instance and request; and being so indebted, they the said William and Ann, in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said sum of money, when they the said William and Ann should be thereto afterwards requested.

Quantum meruit.

And whereas afterwards, in the respective lifetimes of the said William and Ann, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said J. R. had before that time sold and delivered certain other cattle to the said William and Ann, at their like special instance and request, they the said William and Ann undertook, and then and there faithfully promised the said J. R. to pay him so much money as he therefore reasonably deserved to have, when they the said William and Anne should be thereto afterwards requested: and the said J. R. avers, that he therefore reasonably deserved to have the further sum of forty pounds of like lawful money, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said William and Ann in their respec-

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tive lifetimes, afterwards, to wit, on the day and year aforeſaid, there had notice. And whereas the ſaid William and Ann, in *2d Count, for divers journies on horſeback.* their reſpective lifetimes, afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, were indebted to the ſaid J. R. in the further ſum of forty pounds of like lawful money, as well for divers journies on horſeback by the ſaid J. R. before that time had and taken as for the work and labour of the ſaid J. R. by him before that time done and performed in and about the buſineſs of the ſaid William and Ann, at their like inſtance and requeſt; and being ſo indebted, they the ſaid William and Ann in their reſpective lifetimes, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook, and faithfully promiſed the ſaid J. R. to pay him the ſaid laſt mentioned ſum of money when they the ſaid William and Ann ſhould be thereto afterwards requeſted: And whereas afterwards, in the reſpective lifetimes of the ſaid *Quantum meruit.* William and Ann, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid J. R. at the like inſtance and requeſt of the ſaid William and Ann, had before that time had and taken divers other journies on horſeback, and alſo had done and performed other his work and labour in and about the buſineſs of the ſaid William and Anne, they the ſaid William and Ann undertook, and then and there faithfully promiſed the ſaid J. R. to pay him ſo much money as he therefore reaſonably deſerved to have, when they the ſaid William and Ann ſhould be thereto afterwards requeſted; and the ſaid J. R. avers, that he therefore reaſonably deſerved to have the further ſum of forty pounds, of like lawful money, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, whereof the ſaid William and Ann in their reſpective lifetimes, afterwards, to wit, on the day and year aforeſaid, there had notice. And whereas the ſaid William and Ann in their reſpective *3d Count, uſe and hire of divers mares and geldings.* lifetimes, afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, were indebted to the ſaid J. R. in the further ſum of forty pounds of like lawful money for the uſe and hire of divers mares and geldings of the ſaid J. R. by him before that time let to hire to the ſaid William and Ann, at their like inſtance and requeſt, and by the ſaid William and Ann, according to that letting to hire, had and uſed for a long ſpace of time then elapſed; and being ſo indebted, they the ſaid William and Ann in their reſpective lifetimes, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, undertook, and faithfully promiſed the ſaid J. R. to pay him the ſaid laſt mentioned ſum of money when they the ſaid William and Ann ſhould be thereto afterwards requeſted: And *Quantum meruit.* whereas afterwards, in the reſpective lifetimes of the ſaid William and Ann, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid

J. R. at the like instance and request of the said William and Ann, had before that time let to hire to the said William and Ann divers other mares and geldings of him the said J. R. and that the said William and Ann, according to that letting to hire, had used the same for a long space of time then elapsed, they the said William and Ann undertook, and then and there faithfully promised the said J. R. to pay him so much money as he therefore reasonably deserved to have, when they the said William and Ann should be thereto afterwards requested; and the said J. R, avers, that he therefore reasonably deserved to have the further sum of forty pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid; whereof the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, there had notice. And whereas the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, were indebted to the said J. R. in the further sum of forty pounds of like lawful money, for money by the said J. R. before that time paid, laid out, and expended for the use of the said William and Ann, at their like instance and request; and being so indebted, they the said William and Ann in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said last-mentioned sum of money, when they the said William and Ann should be thereto afterwards requested: Yet the said William and Ann in their respective lifetimes, before the decease of the said Ann, and the said William in his lifetime, after the decease of the said Ann, and the said Sarah, executrix as aforesaid, in her lifetime, after the respective deceases of the said Ann and William, and the said J. G. executor as aforesaid, after the respective deceases of the said Ann, William, and Sarah, not regarding the several promises and undertakings so made by the said William and Ann in their respective lifetimes as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. R. in this behalf, have not, nor hath either of them, yet paid the said several sums of money, or any part thereof, to the said J. R. (although the said William in his lifetime, afterwards, to wit, on the day and year last aforesaid, and the said Sarah, executrix as aforesaid, in her lifetime, after the decease of the said William, to wit, on the first day of March in the year 1787 aforesaid, and the said J. G. executor as aforesaid, after the respective deceases of the said William and Sarah, to wit, on the said second day of April in that year, were severally requested to pay the same to the said J. R. to wit, at London aforesaid, in the parish and ward aforesaid) but to do this the said William in his lifetime, and the said Sarah, executrix as aforesaid, in her lifetime, after the decease of the said William, and the said J. G. executor as aforesaid, after the respective deceases of the said William and Sarah, have, and each of them hath, wholly refused, and the

Money laid out and expended.

Conclusion. Against the executor of the executrix of the survivor of two persons joint contractors.

the ſaid J. G. executor as aforeſaid, ſtill refuſes ſo to do, and the ſame and every part thereof ſtill remains wholly due and unpaid to the ſaid J R. wherefore the ſaid J. R. ſays, that he is injured and has ſuſtained damage to the amount of fifty pounds; and therefore he brings ſuit, &c.

LONDON, *ſſ.* J. G. late of Potters Bar in the county of Middleſex, yeoman, executor of the laſt will and teſtament of S. C. deceaſed, who in her lifetime was ſole executrix of the laſt will and teſtament of William R. the ſon deceaſed, which ſaid William R. and one Ann R. deceaſed, whom the ſaid William R. ſurvived, in their reſpective lifetimes were executor and executrix of the laſt will and teſtament of William R. the father alſo deceaſed, and which ſaid William R. the ſon, in his lifetime, after the death of the ſaid Ann R. was the ſurviving executor thereof, was attached to anſwer unto John R. in a plea of treſpaſs upon the caſe, &c.: and thereupon the ſaid John R. by Thomas Wild his attorney, complains, that whereas the ſaid William R. the father, in his lifetime, to wit, on the firſt day of January A. D. 1774, at London aforeſaid, in the pariſh of St. Mary le Bow in the ward of Cheap, was indebted to the ſaid John in the ſum of eighty pounds of lawful money of Great Britain, for the ſalary and wages before that time due and payable from the ſaid William R. the father to the ſaid John R for the ſervice of the ſaid John R. before then done and performed as the hired ſervant of the ſaid William R. the father, at his ſpecial inſtance and requeſt, and on his retainer; and being ſo indebted, he the ſaid William the father, in his lifetime, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook, and faithfully promiſed the ſaid John R. to pay him the ſaid ſum of money, when the ſaid William R. the father ſhould be thereto afterwards requeſted: And whereas afterwards, in the lifetime of the ſaid William R. the father, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid John R. had before that time done and performed other his ſervice as the hired ſervant of the ſaid William R. the father, at his like inſtance and requeſt, and on his retainer, he the ſaid William R. the father undertook, and then and there faithfully promiſed the ſaid John R. to pay him ſo much money as he the ſaid John R. for his ſaid laſt-mentioned ſervice, and for his ſalary and wages in that behalf reaſonably deſerved to have, when he the ſaid William the father ſhould be thereto afterwards requeſted; and the ſaid John R. avers that he therefore reaſonably deſerved to have had the further ſum of eighty pounds of like lawful money, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, whereof the ſaid William R. the father, in his lifetime, afterwards, to wit, on the day and year aforeſaid, there had notice: Yet the ſaid *William R. the father, in his lifetime, and the ſaid* William R. the ſon, and Ann R. executor and

Indebitatus aſſumpſit in C. B. by the *executor* of an *executrix* of the *ſurviving co-executor*, on a promiſe by the teſtator for the *ſalary* and *wages* of plaintiff as an hired ſervant.

Quantum meruit.

Concluſion. Omit the words between inverted commas.

and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. and the said William R. the son, surviving executor as aforesaid, in his lifetime, after the *respective deaths of the said William R. the father, and* " death of the said" Ann R. and the said Sarah C. executrix as aforesaid, in her lifetime, after the respective deaths of the said William R. the *father*, " son, and" Ann R. *and William R. the son*, and the said John G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R. the son, and Sarah C. not regarding the several promises and undertakings so made by the said William R the *father*, " son, and Ann R. executors and executrix as aforesaid, in their respective lifetimes, after the death of the said W. R." *in his lifetime*, as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. R. in this behalf, have not, nor hath either of them, yet paid the said several sums of money, " in those promises and undertakings mentioned," or any part thereof, to the said John R. although the said William R. *the father*, *in his life ime, afterwards, to wit, on the day and year aforesaid, and the said William R.* the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. " afterwards," to wit, on the *first day of February in the year of Our Lord* 1786, " day and year last aforesaid," and the said William R. the son, surviving executor as aforesaid, in his lifetime, after the *respective* deaths of the said *William R. the father*, Ann R. to wit, on the " said" first day of June, in the *same* year " 1786 aforesaid," and the said Sarah C. executrix as aforesaid, in her lifetime, after the respective deaths of the said *William R. the father*, Ann R. and William R. the son, to wit, on the " said" first day of March A. D. 1787, and the said J. G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R, the son, and Sarah C. to wit, on the second day of April in the same year, were severally requested to pay the same to the said John R, that is to say, at L. aforesaid, in the parish and ward aforesaid; but to do this the said *William R. the father, in his lifetime, and the said* William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. and the said William R. the son, surviving executor as aforesaid, in his lifetime, after the *respective* deaths of the said *William R. the father* Ann R. and the said Sarah C. executrix as aforesaid, in her lif time, after the respective deaths of the said *William R. her father*, Ann R. and William R. the son, and the said J. G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R. the son, and Sarah C. have, and each of them hath, hitherto wholly refused, and the said John G. executor as aforesaid,

said, still refuses so to do, and the same and every part thereof still remains wholly due and unpaid to the said John R. And whereas the said William R. the father, in his lifetime, to wit, on the first day of January, in the year 1774 aforesaid, at L. aforesaid, in the parish and ward aforesaid, was indebted to the said John R. in the further sum of eighty pounds of like lawful money, for the work and labour of the said John R. by him before that time done and performed for the said William R. the father, at his like instance and request; and being so indebted at the time of his death, and the said last-mentioned sum of money remaining wholly unpaid and unsatisfied, they the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, in consideration thereof, afterwards, and after the death of the said William R. the father, to wit, on the first day of April A. D. 1785, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said John R. to pay him the said last mentioned sum of money when they the said W. R. the son, and A. R. executor and executrix as aforesaid, should be thereto afterwards requested: And whereas afterwards, and after the death of the said William R. the father, and in the respective lifetimes of the said W. R. the son, and A. R. to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said John R. in the lifetime of the said W. R. the father, had done and performed other his work and labour for the said W. R. the father, at his like instance and request, they the said W. R. the son, and Ann R. executor and executrix as aforesaid, undertook, and then and there faithfully promised the said John R. to pay to him so much money as he therefore reasonably deserved to have, when they the said W. R. the son, and Ann R. executor and executrix as aforesaid, should be thereto afterwards requested; and the said John R. avers, that he therefore reasonably deserved to have the further sum of eighty pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid, whereof the said W. R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, afterwards, to wit, on the day and year last aforesaid, there had notice. And whereas the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, afterwards, to wit, on the day and year last aforesaid, accounted together with the said John R. of and concerning divers other sums of money, which were due and owing from the said W. R. the father in his lifetime to the said John R. and were then remaining in arrear and unpaid, and upon that accounting the said William R. the son, and Ann R. executor and executrix, were then and there found in arrear and indebted to the said John R. in the further sum of eighty pounds of like lawful money; and being so found in arrear and indebted, they the said W. R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said John R. to pay

2d Count, for other work and labour; on promising executor and executrix after the death of W. R. the father.

Quantum meruit.

3d Count. On an account stated between plaintiff and executor and executrix of J. R. in the lifetime of deceased executrix.

 pay

pay him the said last mentioned sum of money, when he the said W. R. the son, and A. R. executor and executrix as aforesaid, should be thereto afterwards requested: Yet, &c. (Breach like the first Count, omitting the words in italic, and inserting the words within *inverted commas*, which are omitted in the first and second Counts.)

I Have abridged this precedent, as I purpose to do where it runs too long, to the exclusion of more important matter, as in page 159, 160. ante, on Tolls.

Declaration by A. and B. *administrators cum testamento annexo de bonis non*, of administrator against defendant for the *use and hire of a wharf* and divers warehouses.

LONDON, to wit. George Shepley esquire and John Lloyd gentleman, administrators with the will annexed of all and singular the goods, chattels, and credits which were of Richard Davies deceased at the time of his death left unadministered by Samuel Davies, which said S. D. in his life-time, and at the time of his death, was also administrator with the will annexed of all and singular the goods, chattels, and credits aforesaid, complain of Joseph Gattey esquire, being, &c. for that whereas the said Joseph heretofore, to wit, on the first day of August, A. D. 1780, to wit, at L. aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, was indebted to the said Richard D. in his lifetime in the sum of one hundred and sixty pounds of lawful, &c. for the use and hire of a certain wharf, and of divers, to wit, ten warehouses of the said R D. situate and being in the parish of St. John, Southwark, in the county of S. before that time let to hire to the said Joseph, and at his special instance and request, and by him the said Joseph, according to such letting to hire, before that time had and used in and about the depositing and storing and keeping therein of divers goods, wares, and merchandizes; and being so indebted (assumpsit to the said R. D. in his lifetime.) And whereas afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in consideration that the said R. D. in his lifetime, at the like special instance and request of the said Joseph, had before that time let to hire to the said Joseph a certain other wharf and divers, to wit, ten other warehouses of him the said R. D. situate and being in the said parish of St. John, Southwark, in the county of S. aforesaid, and that he the said Joseph had, according to such letting to hire, before that time had and used the same, for, in, and about the depositing, storing, and keeping therein of divers other goods, wares, and merchandizes, he the said Joseph then and there undertook, and faithfully promised the said R. D. in his lifetime to pay him [quantum meruit] [indebitatus assumpsit to the testator in his lifetime for the work and labour, care and diligence of the said R. D. and his servants before that done, performed, and bestowed in and about the shipping, landing, weighing, housing, unhousing, rehousing, filling, turning, loading, of divers other goods, wares, and merchandizes for the said Joseph, and at his like special instance and request] quantum meruit thereon. [Two Counts for work and labour generally, money paid, had,

had, and received, account stated, and conclusion as follows.]

Conclusion. By administrators *de bonis non* of an administrator.

Yet the said Joseph, not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. D. in his lifetime, and the said S. D. in his lifetime, after the death of the said R. D. (to which said S. D. in his lifetime, after the death of the said R. D. to wit, on the twenty-ninth of December, A. D. 1780, at L. aforesaid, in the parish and ward aforesaid, administration with the will annexed of all and singular the goods, chattels, and credits which were of the said R. D. deceased at the time of his death, by Frederick by divine providence archbishop of Canterbury, primate of all England, and metropolitan, in due form of law was granted,) and the said George and John, after the several respective deaths of the said R. D. and S. D. (to which said G. and J. after the several respective deaths of the said R. D. and S. D. to wit, on the twenty-eighth of March, A. D. 1781, at L. aforesaid, in the parish and ward aforesaid, administration with the will annexed of all and singular the goods, chattels, and credits aforesaid left unadministered by the said S. D. administration as aforesaid by Frederick by divine providence archbishop, primate, and metropolitan as aforesaid, in due form of law was granted,) he the said Joseph hath not paid the said several sums of money, or any or either of them, or any part thereof, either to the said R. D. in his lifetime, or to the said S. D. administrator in his lifetime, after the death of the said R. D. or to the said George and John, administrators as aforesaid, since the several and respective deaths of the said R. D. and S. D. or either of them, (although so to do this the said Joseph was requested by the said R. D. in his lifetime, to wit, on the day and year first above mentioned, and often afterwards, and by the said S. D. administrator as aforesaid, in his lifetime, after the death of the said R. D. and by the said George and John, administrators as aforesaid since the several and respective deaths of the said R. D. and S. D. to wit, at L. aforesaid, in the parish and ward aforesaid,) but he the said Joseph to pay the said several sums of money, or any or either of them, or any part thereof, in manner aforesaid, hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said G. and J. administrators as aforesaid, or either of them, to the damage of the said G. and J. of one hundred pounds; and therefore they bring suit, &c.: and they bring into court here the letters of administration of the said archbishop, as well those which were granted to the said S. D. in his lifetime as those which were afterwards granted to the said G. and J. which sufficiently testify to the court here the granting the several administrations aforesaid to the said S. D. in his lifetime, and to the said G. and J. since the death of the said S. D. in his lifetime, and to the said G. and J. since the death of the said S.D. the dates whereof are the days and years above in that behalf respectively mentioned. *Drawn by* W. TIDD.

Profert of letters testamentary.

Declaration by an *administrator* for *foreign money*, viz rupees, lent and advanced by the intestate to the defendant.

MIDDLESEX, to wit. D. S late of &c. was attached to answer H. C. administratrix of all and singular the goods and chattels which were belonging to A. C. deceased, at the time of his death, who died intestate, of a plea of trespass on the case; and thereupon the said H. C. by A. B. her attorney, complains, that whereas the said defendant, on, &c. at &c. in, &c. was indebted to the said A. C deceased, in his lifetime in the sum of ten thousand rupees of *foreign money*, to wit, of the money of Bombay in the East Indies, of great value, to wit, of the value of two thousand pounds of lawful, &c, for the like sum of the aforesaid foreign money by the said A. C. deceased, in his lifetime before that time paid, laid out, and expended to and for the use of the said defendant, and at his special instance and request; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, &c. undertook, and then and there faithfully promised the said A. C. deceased, in his lifetime to pay him the said sum of foreign money, when he the said defendant should be thereto afterwards requested. And whereas [Count for ten thousand rupees lent and advanced, money had and received, and an account stated; common Counts for money paid, &c. lent and advanced, had and received]: Yet the said defendant, not regarding, &c. but contriving, &c. the said A. C. deceased, in his lifetime, and the said H. C. (to which said H. C. administration of all and singular the goods and chattels which were of the said A. C. deceased, at the time of his death, who died intestate, after the death of the said A. C. to wit, on, &c. at, &c. to whom the granting of administration in that behalf of right belonged, was committed after the death of the said A. C) in this behalf did not pay to the said A. C. deceased, in his lifetime, nor to the said H. C. administratrix as aforesaid, since the death of the said A C. the said several sums of foreign money, or any of them, or any part thereof, or the value thereof, or of any part thereof, or the said several sums of money, or any or either of them, or any part thereof, although so to do he the said defendant was requested by the said A. C. deceased in his lifetime, or to the said H. C. since his death, he the said defendant hath altogether refused, and still refuses, to pay the same to the said H. C. as administratrix as aforesaid, whereupon the said H. C. saith that she is injured, &c. (Profert of letters testamentary.)

Drawn by Mr. GRAHAM.

Declaration in assumpsit for several *fines* due on admission to several distinct sets of copyhold premises (in conformity to Judge Blackstone's opinion) against *baron and feme, administratrix* de bonis non.

STAFFORDSHIRE, *ss*. The right honourable John lord viscount Dudley and Ward complains of James Goodin and Margaretta his wife, which said Margaretta is the administratrix of all and singular the goods and chattels, rights and credits which were belonging to John Newton deceased, at the time of his death unadministered by Ann Parr, widow, who in her lifetime, and at the time of her death, was administratrix of all and singular the goods and chattels, rights and credits which were of the said John Newton deceased at the time of his death, who died intestate, being, &c. for that whereas the said viscount, on, &c.

 and

and long before, was, and from thence hitherto hath been, and still is, lord of the manor of Kingswinford, in the said county of S. of which said manor divers, to wit, eight acres of land, called Dacre's Hill, with the appurtenances, situate, lying, and being within the said manor, now are, and from time whereof, &c. have been parcel and customary tenements demised and demiseable by copy of the court-rolls of the said manor for the time being, to any person or persons willing to take the same, in fee simple or otherwise, at the will of the said lord, according to the custom of the said manor. And whereas within the said manor of Kingswinford there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that every customary tenant of the said manor, upon his admission to any customary tenement parcel of the said manor, by the lord of the said manor, by himself or by the steward of the court of the said manor for the time being, hath paid, and hath used and been accustomed, and of right ought to pay, to the lords of the said manor for the time being, being lords at the time of such admission, a reasonable sum to be assessed by the lord of the said manor for the time being, by himself or by the steward of the court of the said manor for the time being, for a fine for such his admission to the said customary tenement; and the said viscount further saith, that the said viscount, at the instance and request of the said John N. upon the said, &c. within the manor aforesaid, by Richard Keeling gentleman, then steward for the said viscount of his court of the said manor, according to the custom of the said manor, admitted the said John N to the said eight acres of land, with the appurtenances, to have and to hold the same unto the said J. N. and to his heirs forever, at the will of the lord, according to the custom of the said manor: and the said viscount in fact further saith, that the said eight acres of land, with the appurtenances, at the time of the admission of the said J. N. thereunto, were of the annual value of eight pounds; and the said viscount, then being lord of the said manor, did then, to wit, at the time of the said admission by the said Richard Keeling, then his steward of the said court of the said manor, assess and appoint the sum of fourteen pounds of lawful, &c. as and for a fine to be paid by the said J. N. to the said viscount, for the said admission of him the said J. N. to the said eight acres, being such customary tenement as aforesaid, to wit, at, &c. aforesaid, which said sum of fourteen pounds then and there was a reasonable sum of money to have been paid by the said J N. to the said viscount, then lord of the manor aforesaid, for the said admission of the said J. N. to the customary tenement aforesaid, with the appurtenances; whereof the said J. N. afterwards, to wit, on the said, &c. at, &c. aforesaid, had notice; and thereupon the said J N. in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, undertook, and faithfully promised the said viscount, to pay him the said sum of fourteen pounds when he should be thereto afterwards requested. [There were three other Counts drawn exactly on the same indenture, for different fines on different admissions to different

ferent premises, and an additional Count for one hundred and fifty pounds fine for *respective* admissions to the *several* customary tenements respectively, like the first Count; another Count for money had and received]; Yet the said J. N. in his lifetime, and the said Ann Parr, administratrix as aforesaid, in her lifetime, after the death of the said J. N. and the said James, and Margaretta administratrix as aforesaid, since the respective deaths of the said J. N. and Ann Parr, not regarding the said several promises and undertakings so as aforesaid made by the said J. N. in his lifetime, but contriving, &c. have not, nor hath any or either of them, paid the said several sums of money, or any part thereof, to the said viscount, (although to do this the said J. N. and the said Ann Parr administratrix as aforesaid, in her lifetime, after the death of the said J. N. were oftentimes requested by the said viscount, and although they the said James and Margaretta administratrix as aforesaid, were thereto severally requested by the said viscount, after the several and respective deaths of the said J. N. and Ann Parr, to wit, on the day and year last aforesaid, and often both before and afterwards, to wit, at, &c. aforesaid,) but they the said J. N. and Ann Parr to pay the same, or any part thereof, to the said viscount in the lifetime of the said J. N. and Ann Parr, have altogether refused; and the said James and M. administratrix as aforesaid, to pay the same, or any part thereof, to the said viscount, since the respective deaths of the said J. N. and A. P. have, and each of them hath, hitherto wholly refused, and still do, and each of them doth, wholly refuse so to do. Damages forty pounds. See plea and replication to the like Declaration post. Pleas in Assumpsit—Tender.

Conclusion. By baron and *feme administratrix de bonis non.*

Cambridge Lent assizes, Hitch v. Wallis, B. R where assumpsit lies for a fine on admission to a copyhold. The declaration in Hitch v. Wallis was for a gross sum of fifty one pounds, due on admission to certain customary tenements; and it appeared by the court rolls of the manor, that the tenements consisted of distinct parcels, to which there had always been, and were in the last instance, distinct admissions, and three distinct quit-rents. Objection was made to the declaration, that it ought to have set forth the several fines that were due on each admission, specifying how much in each parcel in different Count, and not a gross sum for the whole in one Count, vide 4 Co. Taverner's case, and Cro. Eliz. 779. Dalton v. Hammond. It was in the last case (inter alia) resolved, "That if divers copyholds descend to one "heir, the lord cannot demand *one* fine "for them all, but he ought to demand "several fines, for peradventure the "heir may accept the one at the fine as"sessed, and refuse the other upon such "fines." It was answered at the trial "on the part of the plaintiff, that the ob"jection, if at any time valid, was waived "now by the defendant's plea, which was "a tender of a gross sum paid into court. "Mr. J. Blackstone allowed the objec"tion, and nonsuited the plaintiff. He "said that copyholds depend on custom; "there can be no new copyholds, nor "old ones with new rents; if the rents "are varied, it ceases to be the same "copyhold; their rents are the criteria "of copyholds, and though put together "they will not unite or alter the nature "of different copyholds. Strictly speak"ing, on each copyhold there ought to "be a distinct admission; but for con"venience of the tenants, it is usual to "make only one; and since the stamp "acts, the lords and tenants are fond of "putting different copyholds together, "to avoid those acts. On the admission "of the tenant, the lord ought to de"mand different fines: so it is now "said he did, but it does not appear so "on the record. Here are three copy"holds; one rent unknown; the second, "one pound twelve shillings and four"pence; the third, two shillings. They "appear to have been consolidated, and "one fine (not fines as if consisting of "different sums) is assessed for all; and "the

" the declaration following that assess-
" ment is wrong, for in fact there is not
" one fine, but three, and it is necessary
" to specify the fines, for the tenant
" may admit the reasonableness of one,
" and not that of others; but if thrown
" into hotchpot, he may be defeated,
" though some were unreasonable; for if,
" one was as much below the mark as
" the other above it, the tenant might
" not be able to object to the whole,
" though he might well object to some
" separately. But it is said we may re-
" sort to the second Count, which is on
" a general undertaking; but the same
" objection holds there, for that Count
" does not go for reasonable fines, but
" for a fine. Secondly, it is answered,
" that defendant, by his tender of a gross
" sum, has waived the objection; but
" the plaintiff must prevail by the
" strength of his own cause, and not the
" weakness of the adverse party. The
" plaintiff ought to have declared sepa-
" rately for each fine; thus the defen-
" dant might object to each, and the
" jury judge of the reasonableness of
" each; otherwise, if one was too much,
" and the other too small, the lord might
" force the tenant by this consolidation
" to take several different copyholders
" on one admission." Lord Dudley v. Goodier and Wife administratrix.

THAT whereas the said A. B. on the eighth day of September, A. D. 1775, to wit, at, &c. was the owner or master of a certain ship called, &c. then being in the river of Thames, and was then also possessed of a lading of coals, that is to say, a lading of coals of a certain quality or sort called Tanfield moor coals, then deposited and being in and on board of the said ship, to wit, at, &c. and the said A. B. so being owner or master of the said ship, and so being possessed of the said lading of coals therein, it was afterwards, to wit, on the same day and year, at, &c. aforesaid, agreed by and between the said C. D. and E. F. of the one part, and the said A. B. of the other part, as follows, that is to say, that the said C. D. and E. F. had bought of the said A. B. his said whole lading of the said coals at thirty pounds ten shillings by the score, for each and every score of chaldron of the said coals, and metage as usual, to be delivered from and out of the said ship, in the said river of Thames, by the said A. B. unto the said C. D. and E. F. and to be by the said C. D. and E. F. accordingly accepted, taken, and carried away in seven days then next following, and that the price of the said cargo of coals should be paid as follows, that is to say, on delivery of the said cargo of coals one third part of the value thereof in cash, one other third part thereof in a note at sixty days, to be dated on the day after the delivery of the said ship, to be payable to the order of the said A. B. and the remaining one third part thereof when the duty for the said coals should become due at the custom-house; and the said A. B. agreed to pay the market dues for the said coals, and to allow the said C. D. and E. F. two pounds per cent. on the one-third of the said price so agreed to be paid in a note at sixty days as aforesaid, if the same should be paid in cash on the ship's delivery, and two pounds per cent. on the one-third of the said price so agreed to be paid when the duty for the said coals should become due at the custom-house, if paid in time to save the discount on the said duty at the said custom-house: And the said agreement being so made, (&c. mutual promises) and the said A. B. avers, that he the said A. B. after the making of the said agreement, and within the said seven days then next following, was ready and willing to deliver the

By the owner and master of a ship loaden with coals lying in the river Thames, against defendant, who had purchased the lading of coals to be taken away within seven days. Defendant took a part but did not take the residue, whereby plaintiff was detained on *demorage* twenty days.

* See ante, p. 158.

whole

whole of the said lading of coals from and out of the said ship in the said river unto the said C. D. and E. F. and did, during that time, deliver great part of the said loading of coals from and out of the said ship unto the said C. D. and E. F. and would during that time have delivered the residue of the said loading of coals from and out of the said ship unto the said C. D. and E. F. if they would have accepted, taken, and carried away the same; and requested the said C. D. and E. F. to accept, &c. accordingly, to wit, at, &c. And although he the said A. B. hath always since the making of the said agreement, hitherto well and truly observed, performed, fulfilled, and kept every thing in the said agreement mentioned and contained on his part and behalf to be observed, &c. according to the tenor and effect, true intent and meaning of the said agreement; yet the said C. D. and E. F. not regarding the said promise and undertaking so by them made, in manner and form, &c. in this behalf as aforesaid, but contriving, &c. in this behalf did not, nor would within seven days next after the making the said agreement, accept, or take away the residue of the said loading of coals (although to perform their said agreement, and their said promise and undertaking in this behalf, they the said C. D. and E. F. during the said seven days, to wit, on the twelfth of September, in the year last aforesaid, and often afterwards, to wit, at, &c. were requested by the said A. B. but they to do the same wholly refused and neglected, contrary to the said agreement, and their said promise and undertaking in this behalf; whereby the said A. B. was obliged to keep and continue his said ship, and the same was thereby detained in the said river for the delivery of the said residue of the said loading of coals for a long time, to wit, for the space of twenty days over and beyond the said space of seven days, and longer than the time so agreed upon for the said delivery and acceptance thereof as aforesaid; whereby the said ship of the said A. B. was, during that time, incumbered and taken up with the residue of the said loading of coals, and the said A. B. thereby during that time lost, and was deprived of the use and benefit of his said ship, to wit, at, &c. And whereas the said A. B. heretofore, to wit, on, &c. [State plaintiff to be possessed of ship and coals as in first Count.] And the said A. B. so being owner, &c. of the said last-mentioned ship, and so being possessed of the said last-mentioned loading of coals therein, on the same day and year aforesaid, at, &c. aforesaid, in consideration that the said A. B. at the special instance and request of the said C. D. and E. F. had sold to the said C. D. and E. F. the said A. B.'s whole loading of coals last-mentioned for a certain price, then and there agreed upon between the said C. D. and E. F.; and the said A. B. had agreed to deliver the said last-mentioned loading of coals from and out of the said last-mentioned ship unto the said C. D. and E. F. in seven days then next following, they the said C. D. and E. F. then and there undertook and faithfully promised the said A. B. to accept and take away the said loading of coals from the said last-mentioned ship accordingly, within the said seven days, and the

2d Count, for not accepting it.

the said A. B. avers, that he the said A. B. after the making of the said last-mentioned promise and undertaking, and during the whole of the said seven days, was ready and offered to deliver, and would have delivered the whole of the said last-mentioned loading of coals from and out of the said ship unto the said C. D. and E. F. and during the said seven days did deliver great part of the said last-mentioned loading of coals, from and out of the said last-mentioned ship, unto the said C. D. and E. F. and requested the said C. D. and E. F. to accept and take the residue of the said last-mentioned loading of coals, accordingly, to wit, at, &c. yet, &c. [a similar conclusion to the first Count, omitting any mention of an agreement, and alledging the demorage for ten days only.] And whereas also the said A. B. &c. as in second Count] in consideration that the said A. B. at the special instance and request of the said C. D. and E. F. had sold to the said C. D. and E. F. the said last-mentioned loading of coals, so laden in the said last-mentioned ship, for a certain price then and there agreed upon between the said C. D. and E. F. and the said A. B. and they the said C. D. and E. F. undertook, and then and there faithfully promised the said A. B. to deliver the said last-mentioned ship of her said loading of coals in seven days then next following; and the said A. B. says, that although the said C. D. and E. F. after the making of the said last-mentioned promise and undertaking, and within the said time or space of seven days then next following, did deliver the said last-mentioned ship of her said loading of coals, and might within that time have delivered the said ship of the residue of her said last-mentioned loading of coals, and were requested by the said R. F. so to do, to wit, at, &c. yet, &c. did not deliver the said last-mentioned ship of the residue of her said last-mentioned loading of coals, [although to perform, &c.] but they to perform, &c. whereby, &c. [as in second Count.] And whereas the said C. D. and E. F. afterwards, to wit, on the first of December, in the year last aforesaid, at, &c. aforesaid, were indebted to the said A. B. in fifty pounds of lawful, &c. for the demorage of a certain ship or vessel of the said A. B. by them the said C. D. and E. F. before that time retained and used with divers goods, wares, and merchandizes on board the said last-mentioned ship or vessel on demorage for a long time, to wit, for the space of ten days then elapsed, and at the special instance, &c. and being so indebted, &c. And whereas afterwards, to wit, &c. in consideration that the said A. B. at the like special instance, &c. had before that time permitted the said C. D. and E. F. to retain and use a certain other ship or vessel of him the said A. B. with divers goods, &c. on board of the said last-mentioned ship, or, &c. on demorage, &c. and that they the said C. D. and E. F. had, according to that permission, retained and used the same in manner last aforesaid for a long time, to wit, for the space of ten days then elapsed, they the said C. D. and E. F. then and there undertook, &c. to pay him so much money as he reasonably deserved to have for the demorage of the said last-mentioned ship, or, &c. when, &c. and the said A. B. avers, &c. whereof, &c. there had notice, yet, &c. [common conclusion to the two last Counts.] C. PENNINGTON.

3d Count.

4th Count.

5th Count.

ASSUMPSIT ON BILLS OF EXCHANGE AND PROMISSORY NOTES.

NOTES and INSTRUCTIONS for drawing DECLARATIONS upon BILLS of EXCHANGE and PROMISSORY NOTES; with References subjoined to the Precedents to all the Cases upon the Subject.

THE instrument or writing which constitutes a good bill of exchange, according to the law, usage, and custom of merchants, is not (according to lord chief justice De Grey, in delivering the Opinion of the Court in the case of Dawkes and Wile v. De Loraine, E.T. 11. Geo. III. 3. Wils. Rep. 213.) "confined to any certain form or "*set of words* (1), yet it must have some *essential qualities* (2), with- "out which it is no bill of exchange; it must carry with it a personal "and certain credit given to the *drawer*, not confined to *credit* upon "any *thing or fund* (3); it is upon the credit of a person's hand, as on "the hand of the drawer, the indorser, or the person who negociates "it. He to whom such bill is made payable or indorsed takes it upon "*no* particular event or contingency (4), except the failure of the ge- "neral personal credit of the persons drawing or negociating the "same." And therefore a writing in these words

"*January* 8, 1768.

"*Seven weeks after date please to pay Miss Read thirty-two pounds "and seventeen shillings out of Steward's money, as soon as you re[illegible] "it; for your humble servant,* *De Loraine.*

"£. 32 : 17 : 0

"*To Timothy Brecknock, St. Mary-le-Bone.*

"*Accepted by Timothy Brecknock.*"

was held not to be a bill of exchange within the custom of merchants. Added to this, it seems essentially necessary that it be *negociable* (5), i. e. payable *to order* (6), (vid. cases, and the authorities cited), and for *value received* same cases.

The several parties to a bill of exchange are,

DRAWER, the person who draws or makes the bill of exchange:—DRAWEE, the person on whom a bill of exchange is drawn, and who is to pay it if he accepts it:—PAYEE, the person to whom a bill of exchange or note is to be paid:—ACCEPTOR, the person on whom a bill of exchange is drawn, and who is to pay if he accepts it; he is then called the acceptor:—INDORSER, the first indorser is he to whom or to whose order a bill or note is payable. Sometimes a bill is made

(1) 10 Mod. 287. Lord Raym. 1397. Str 629. 1 Wils 263. Str 706. Str. 1211. 4. Vin. 241. pl. 20. White v. Ledwick, B. R. Stat 25 Geo III. Lord Raym. 1481. Fort. 282. 8. Mod. 267. 1. Barnard 88. Lutw. 889. 1. Mod. Ent. 310. 1. Show. 497. (2) 1 Mod Ent 313. Stra. 1211. 2. Wils 353. 3. Wils. 212. (3) Lord Raym. 1362. Str 592. Fort 282. Lord Raym. 1361. 8. Mod 265. Str. 591. 1211 Cowp. 571. Burr. 226. Lord Raym. 1481. Str. 762. 24. 1. Wils. 263.—(4) Str. 1217. Kington v. Long, B. R. Stat. 25. Geo. III. 3 Lord Raym. 67. 1362. 1396. 8. Mod 363. 4 Vin 240. pl. 16. Burr. 323. Str. 1151. Fort. 281. 10. Mod. 294 316. Lord Raym. 1563. Bl. 782. 3 Wils 207. Bl 1072. Wils. 262.—(5) Str. 1271. Bull. Ni. Pri. ed. 1790, 272. Lord Raym. 1397. 8. Mod. 364. Str. 629. Lord Raym. 1396. 8. Mod. 362. [illegible] —(6) Salk. 133. Mar. 35. 2. Show. 235. 2. Show. 160. Burr. 1516. Bl. 489. 10. Mod. 286. 2. Show. 8. Comb. 401.

payable

payable to a *third* person, reckoning the drawer one, the drawee or acceptor (if it be a bill of exchange) the second; but if it be a *note*, whereby one man promises to pay another, or order, and he to whom it is payable indorses it, he is then a second, not a third person. Sometimes also one man draws a bill of exchange on another, payable to *himself* (the drawer) *or order*, sometimes payable *to* his (the drawer's) *order*; and although in this last case it may seem at first view that none but such order can maintain an action, yet the person to whose order the bill is made payable may also maintain one; and that for very good reasons; for there is no difference between having the power to dispose money and having the money itself; and *order* (7) implies property; nor can anything be understood by it in this case but an authority to appoint the payment of the money, which he does to himself; ruled on demurrer, ——— v. Ormston, Hil. 1. Geo. I. 10. Mod. 286. But in a declaration by such person, it is generally averred, that he has not indorsed or negociated the same, &c.; so in the case above cited: but such an averment cannot be absolutely necessary.—First Indorsee, the person to whom the first indorser indorses the bill or note:—Second Indorser, he to whom the first indorser indorsed the bill or note; and when the first indorsee indorses it to another person, then he is not only First Indorsee but Second Indorser:—Second Indorsee, he to whom the second indorser indorses the bill or note; if he also indorses it, then he is the second indorsee, and the Third Indorser; and so on as to the next, who is the Third Indorsee, and Fourth Indorser to Fourth Indorsee, who becomes Fifth Indorser to Fifth Indorsee, and so on as far as indorsements go: for wherever a man has a bill or note indorsed to him, and indorses it again, he is first an indorsee, then an indorser.

(7) 1. Wilf. 190. Salk. 130. Comb. 401. 10. Mod. 286. Carth. 403. 1. Lord Raym. 654.

Now suppose a bill drawn by A. on B. payable to C. or order, and B. accepts it:—C. indorses to D.; D. indorses to E.; E. indorses to F.; F. indorses to G.

If the bill is not paid by either of the parties to G. he (G.) may sue A. the drawer; or B. the drawee or acceptor; or C. the payee or first indorser; or D. the second indorser and first indorsee; or E. the third indorser and second indorsee; or F. the fourth indorser and third indorsee; all of them in separate actions,

If F. pays the bill, he may sue A. B. C. D. or E. or all of them in separate actions. So if E. pays the bill, he may sue all above him. But (*a*) the drawer cannot sue B. the acceptor, unless somebody to whom the bill is indorsed indorses it to A. then A. sues as indorsee; as suppose G. or any other indorsee indorses it to A.

If any person, suppose C. the payee, or any of the indorsers, sue the acceptor B. then you shew that A. drew a bill on B. payable to C. that B. accepted (*b*) it, whereby he became liable to pay the money to C. according to the tenor of the bill.

If D. the first indorsee sues B. the acceptor, you must shew the making and acceptance of the bill, and that C. to whom, or to whose order,

(*a*) An action upon a bill of exchange lies for the drawer against drawee after he has accepted it. [illegible] Simmonds against Parminter and Barrow, 1. Wilf. 185. [illegible] of England. [illegible] where [illegible] o j[illegible] traders and [illegible]

[illegible] one accepts a bill drawn on both for him and partner, it binds both if it concerns the trade; otherwise if it concerns the trader only in a distinct interest and respect. Ba. Abr. 3d vol. fol. 599. Pinkney and Hall, 1. Salk. 126.

it was payable, *indorsed the bill* (vide postea, as to the necessity of proving first indorsement) to D. and that B. the acceptor had notice of the indorsement, and became liable to pay the money to D. according to the tenor of the bill, and of his acceptance and of the indorsement; and that being so liable, he promised payment accordingly.

(*a*) If the bill is accepted by B. and he does not pay, and C. has not indorsed it over, and does not chuse to sue B. the acceptor, but A. the drawer, then you must shew the making and acceptance of the bill, and that at the expiration of the time specified in the bill for payment the bill was shewn to B. for payment, and that he was requested to pay, and did not, nor has paid the money, of which A. the drawer had notice, and thereby became liable to pay the bill to C. the payee, when he should be thereto requested; and being so liable, he promised to pay the money accordingly.

If D. the first indorsee sues A. the drawer, you must shew the making, acceptance, and indorsement of the bill, notice of the indorsement to the acceptor, presenting the bill to him for payment, and requesting payment; that he has not paid it, that A. the drawer had notice of it, and became liable to pay to D. when requested, and promise of payment, as in the last preceding case.

If any other of the indorsees sue A. you must shew the same, as in the last case, and state all the indorsements, notice of the several indorsements to B. the acceptor, and the presenting the bill to him, his refusal to pay, notice to the drawer, his being liable to pay, and promise; and when you shew that B. the acceptor has not paid, you must shew that neither of the several persons who indorsed the bill before it came to the plaintiff have paid the bill; therefore A. the drawer is liable upon request.

(*b*) If an indorsee sues any of the indorsers who indorsed before it came to the plaintiff, you must shew the same.

If the bill is indorsed before it is accepted, and the person on whom drawn has refused to accept, and the drawer or any of the indorsees is sued, you must shew the bill was indorsed the day it was made, and that after it was indorsed to the plaintiff, he afterwards, to wit, on same day and year, presented the bill to B. on whom drawn, for acceptance, and requested him to accept the bill and pay it, according to the tenor of the bill, and of the indorsements, that he refused to accept the bill, or pay it, and therefore the defendant became liable to pay, *according to the tenor of the bill and the indorsements*, and that defendant promised to pay accordingly. In this case, you say he is liable to pay *according to the tenor of the bill and the indorsements*; but if it is against the drawer or indorser, where the bill has been accepted, and the acceptor has refused payment, you say he became liable to pay *when requested*. For in the first case the bill is supposed to come back to defendant before it is due, and that he says, "I'll pay you the bill according "to the tenor," that is, when due, the bill not being due at that time. In the other case, the bill does not come back to the defendant *till after it is due*, and then he is supposed to promise to pay the money when plaintiff desires him to pay it, that is, when requested.

(*a*) Rushton against Aspinall, Dougl. 680. requires the same ceremony, where the indorsee sues the indorser, and determines that the want of it is error, and not cured by verdict.

(*b*) By the case of Millard v. Mayor, Dougl. 55. it is determined, that on refusal to accept, the drawer became immediately liable to pay, though the bill be not due; so I apprehend would any indorser, by parity of reason.

In the case of notes it is nearly the same, only where they are drawers and indorsers that are sued as defendants, for there is not any acceptor; a note being where one man promises to pay a sum of money to another person, or to his order, or to that person, or to his order. But bills, as before observed, are drawn by one man upon another, payable to a third person or his order, or to the person who draws it, or his order, or to his order only; and when it is accepted, he who drew it payable to himself or order, or to his order, indorses it over to a third person.

To bills of exchange the parties are liable by the law, usage, and custom of merchants, therefore that is mentioned in the declaration. But notes are indorsible and suable by indorsees, by virtue of an act of parliament or *statute*; and therefore in a declaration on a note it is said, &c. *by reason whereof, and by force of the statute in such case made and provided*, the defendant became liable to pay; and being liable, promised payment. 3. & 4. Anne, 9.

A bill to pay out of his *growing subsistence* is not good within the custom of merchants; so to pay so much money out of his rents. Josceline and Lassere, Fort. 281. It is more an *authority* than a bill of exchange, Ch. J. Parker: and though it be no good bill of exchange, yet if it be a good consideration to raise the express promise upon, the declaration will be good. There is no necessity in a bill of exchange to say *value received*. Eyre, J. said the same. And it is not necessary to have *three* persons to make a good bill of exchange; for a man may draw a bill on himself; but it is always taken to be *for a certain sum*, and the party takes on himself to pay *at all events*.

A bill drawn by a man upon himself may be considered as tantamount to an *acceptance* by him; and after tender and refusal by him of payment, an action will lie.

Lord Mansfield held, that where a second, third, or other subsequent indorsee sues upon a bill or note, you need only prove the indorsement of the payee and your next immediate indorser; but Buller, J. contra, where you state all you must prove all as stated.

Qu. Where the acceptor, or, on his non-payment, the drawer, on the bill with four or five indorsements being shewn for payment, promises payment, or does anything which implies an admission of them, does not by that *waive* his right to object to your not being able to prove them? See Sayer Rep. 223. Hankey v. Wilson.

It is not absolutely necessary to say, "super se assumpsit," for the law raises a promise. Salk. 128. Str. 214.

If a bill drawn *twenty-eighth December* at two months is must it seems be paid third March, allowing for the *three days of grace*, so must a bill drawn *thirtieth December* at two months; for in the latter case, by the custom of merchants, the two odd days in December shall be dropped in the account, for the sake of *uniformity*. This is so considered by the bankers themselves.

ON BILLS OF EXCHANGE.

INLAND, BY DRAWER.

Drawer v. Acceptor on a bill returned by payee.

FOR that whereas, at the ſeveral and reſpective times hereafter mentioned, the ſaid plaintiff and defendant, and alſo one A. B. were perſons reſiding, &c. and being ſo reſident, &c. he the ſaid plaintiff, on, &c. at, &c. according to the cuſtom, &c. from time, &c. made his certain bill of exchange in writing, his own proper hand being thereto ſubſcribed, the ſaid bill bearing date, &c. then and there directed the ſaid bill to the ſaid defendant by the name and deſcription of, &c. ; and by the ſaid bill then and there required the ſaid defendant, &c. and then and there delivered the ſaid bill to the ſaid A. B. which ſaid bill of exchange the ſaid defendant afterwards, to wit, on, &c. at, &c. upon ſight thereof accepted, according to the ſaid cuſtom, &c. : and the ſaid plaintiffs aver, that the ſaid A. B. not having, at any time after the ſaid acceptance of the ſaid bill by the ſaid defendant as aforeſaid, indorſed over or negociated the ſaid bill, or ordered or appointed the money therein ſpecified, or any part thereof, to be paid or payable to any other perſon or perſons whatſoever ; ſhe the ſaid A. B. afterwards, and after the end and expiration of the ſaid twenty-ſix days in the ſaid bill ſpecified, and thereby appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. ſhewed and preſented the ſaid bill to ſaid defendant for payment of the money therein ſpecified, and then and there required him to pay the ſame to her the ſaid A. B. according to the tenor and effect of the ſaid bill, and of his aforeſaid acceptance thereof ; but the ſaid (plaintiff) in fact further ſays, that he the ſaid (defendant) did not, when the ſaid bill was ſo ſhewn and preſented to him as aforeſaid, or at any other time whatſoever, pay to the ſaid A. B. the ſaid ſum of money in the ſaid bill ſpecified, or any part thereof, but then and there wholly refuſed and neglected ſo to do : whereupon ſhe the ſaid A. B. afterwards, to wit, on, &c. at, &c. returned the ſaid bill to the ſaid (plaintiff), and called upon him for the payment of the money therein ſpecified ; by reaſon whereof, and of the aforeſaid cuſtom and law of merchants, he the ſaid (plaintiff) was afterwards, to wit, on, &c. at, &c. forced and obliged to pay, and did pay, to the ſaid A. B. the ſaid ſum of, &c. in the ſaid bill ſpecified ; whereof the ſaid defendant then and there had notice ; by means of which ſaid ſeveral promiſes, and by force of the aforeſaid cuſtom and law of merchants, he the ſaid [illegible] became liable [illegible] to the ſaid plaintiff the ſaid ſum of, &c. in the ſaid bill ſpecified, when he the ſaid defendant would be thereto afterwards requeſted ; and being ſo liable, he the ſaid defendant, in conſideration thereof aſſumpſit accordingly. (A Count for goods ſold and money lent and advanced, had and received ; account ſtated ; and common concluſion) (*a*).

Bill not negotiated.

(*a*) See ſimilar precedent poſt. 230. with Mr. Lawes's Opinion.

ON

Drawer v. Acceptor on a bill made payable to the *order* of *drawer*, and returned by indorsee.

2d Count stating that the bill never was negociated

1st Count states that the bill was negociated and returned for non-payment by acceptor.

FOR that whereas the said (plaintiff) heretofore, to wit, on, &c. at, &c. according to the custom, &c. from time, &c. made and drew, &c. the said bill bearing date, &c. and then and there directed the said bill to the said defendant by, &c. and by the said bill required the said defendant after date to pay to the order of him the said plaintiff the sum of, &c.; and the said plaintiff avers, that the said defendant afterwards, to wit, on, &c. at, &c. upon sight of the said bill, accepted the same according to the said custom in that particular, and that the same was afterwards, and before payment of the money therein specified, or of any part thereof, in due manner, and according to the custom, &c in that particular, indorsed over and negociated, to wit, at, &c. whereof the said defendant there had due notice: and the said plaintiff in fact further saith, that the said bill of exchange having been so indorsed and negociated as aforesaid, was afterwards, and at the end and expiration of the time appointed for the payment of the money therein specified, to wit, on, &c. at, &c. shewn and presented to the said defendant for payment of the money therein mentioned, according to the tenor, &c. of the said bill, his aforesaid acceptance thereof, and the aforesaid negociation of the same; yet the said plaintiff in fact further saith, that he the said defendant did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay the money therein specified, or any part thereof, but therein wholly failed and made default, and refused and neglected so to do, whereby and by means whereof the said bill of exchange was afterwards, to wit, on, &c. at, &c. and according to the custom, &c. in that respect, returned to him the said plaintiff, and he the said plaintiff was then and there called upon for, and forced and obliged to pay, the money therein specified; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: by means of which several promises, and by force of the custom and law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill named, on request, &c.: and being so liable, &c. [assumpsit accordingly.] And whereas the said plaintiff on, &c. at, &c. according to the custom of merchants from time, &c. made, &c. as before: which said last mentioned bill of exchange the said defendant afterwards, and before the payment of the money therein specified, or of any part thereof, to wit, on, &c. at, &c. upon sight [illegible] according to the custom, &c. And the said [illegible] the said plaintiff not having at any time before, or at the end and expiration of the time appointed for the payment of the money [illegible] said last mentioned bill mentioned, indorsed over or negociated the same, or ordered or appointed the money therein specified to be paid to any person or persons whatsoever, the said defendant, by force of the custom and law of merchants in that particular, became liable to pay to the said plaintiff the said sum of money in this last mentioned bill specified, according to the nature and effect of the said last mentioned bill, or when he the

the said (defendant) should be thereunto afterwards requested; whereof the said defendant, to wit, at, &c. there had due notice; and being so liable, he the said defendant, in consideration thereof, afterwards, and at the end and expiration of the time appointed for the payment of the money in the said last mentioned bill specified, to wit, on, &c. at, &c. undertook, &c. accordingly—[the common Counts, and then the following conclusion] Yet the said defendant, not regarding, &c. but contriving, &c. hath not yet paid, &c although, &c. and although the said plaintiff hath not, at any time since the making of the said second promise and undertaking above mentioned, indorsed over or negociated the said bill of exchange in that promise and undertaking mentioned, or ordered or appointed the money therein specified, or any part thereof, to be paid to any person or persons whatsoever, but, &c.

Drawer v. Acceptor.

FOR that whereas the said plaintiff heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, the said bill bearing date, &c. and then and there directed the said bill to the said defendant, by the name and description of, &c. and by the said bill required the said defendant, two months after the date of the said bill, to pay to the said plaintiff's order fifty-eight pounds (1) value *delivered in tongues* by him said plaintiff (2); which said bill of exchange the said defendant afterwards, to wit, on, &c. at, &c. upon (*a*) *sight thereof, accepted*, according to the said custom of merchants, whereby the said defendant became liable to pay the said sum of money in the said bill specified, according to the tenor, &c. of said bill, and his aforesaid acceptance thereof; and being so liable, &c. (Promise to pay, according to the tenor, &c. of said bill, and his aforesaid acceptance thereof.) And the said plaintiff avers, that he the said plaintiff *has not at any time indorsed over or negociated* the said bill, but the same is still in the hands and possession of him the said plaintiff, not indorsed over or negociated, &c.

(1) White v Ledwick, B. R. Stat. 25 Geo III. Macleod v. Snee, Ld. Raym. 1481. Fort. 282. 8 Mod. 267. 1 Barnard. 88. Lutw. 889. 1 Mod. Ent. 310. 1 Show. 497. (2) Bur. 2671, 2672. 1 T. R 713. Marius, 2d Ed. 12, 13. Beawes, f. 266. 1st Ed. 453 Molloy, b. 2. c. 10. l. 16. Beawes, f. 49, 1st Ed. p. 400. Marius 2d Ed. 12. 13.

(*a*) See Bayley on Bills of Exchange, 57. where the acceptance need not be stated, except in actions against *acceptor*, or on bills payable within a limited time *after sight*.

Drawer v. Acceptor of a bill [illegible] by payee.

LONDON, *ss.* Thomas Hodges complains of Anselm Jones, being in the custody of, &c. in a plea of trespass on the case, &c. for that whereas, at the several and respective times hereafter mentioned, the said Thomas and Anselm, and also one O. Shortland, were persons residing, trading, and using commerce within this kingdom, to wit, at London aforesaid, in the parish of, &c.; and

and being so resident, trading, and using commerce, he the said Thomas heretofore, to wit, on the first of January A. D. 1780, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, the said bill bearing date the day and year aforesaid, and then and there directed the said bill to the said Anselm by the name and description of Mr. A. Jones, Sidenham, Kent, and by the said bill required the said Anselm, twenty-six days after date, to pay to the said O. Shortland, by the name and description of Mrs. Shortland, or order, eight pounds six shillings, for value in account of him the said Thomas Hodges, and then and there delivered the said bill to the said O. Shortland; which said bill of exchange the said Anselm afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom of merchants: and the said Thomas avers, that the said O. Shortland not having, at any time after the said acceptance of the said bill by the said Anselm as aforesaid, *indorsed over or negociated* the said bill, or ordered or appointed the money therein specified, or any part thereo[redacted] be paid or be payable to any other person or persons [redacted]ver, she the said O. Shortland afterwards, and at the [redacted] of [redacted] said bill specified, and thereby appointed for the payment of the money therein mentioned, to wit, on the thirtieth of January A. D. 1780 aforesaid, at London aforesaid, in the parish and ward aforesaid, shewed and presented the said bill to the said Anselm for payment of the money therein specified, and then and there required him to pay the same to her the said O. Shortland, according to the tenor and effect of the said bill, and of his aforesaid acceptance thereof: but the said Thomas in fact further saith, that he the said Anselm did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay to the said O. Shortland the said sum of money specified in the said bill, or any part thereof, but then and there refused and neglected so to do; whereupon the the said O. Shortland afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, returned the said bill to the said Thomas, and called upon him for payment of the money therein specified; by reason whereof, and of the aforesaid custom and the law of merchants, he the said Thomas was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, forced and obliged to and did pay to the said O. Shortland the said sum of eight pounds six shillings in the said bill specified, whereof the said Anselm then and there had notice: by means of which several premises, and by force of the aforesaid custom and the law of merchants, he the said Anselm became liable to pay to the said Thomas the said sum of eight pounds six

 shillings

ſhillings in the ſaid bill ſpecified, when he the ſaid Anſelm ſhould be thereto afterwards requeſted; and being ſo liable, he the ſaid Anſelm, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook and faithfully promiſed the ſaid Thomas to pay him the ſaid ſum of eight pounds ſix ſhillings in the ſaid bill ſpecified, when he the ſaid Anſelm ſhould be thereto afterwards requeſted. (Add two Counts for goods ſold and delivered; one for money laid out and money lent, &c. had and received; account ſtated; and common concluſion.)

V. Lawes.

If it were not for a modern determination (*a*) againſt me, I ſhould be inclined to think the firſt Count of this Declaration ſubſtantially bad; nor can it in any manner be ſupported but upon the cuſtom of merchants, which, however convenient, is certainly repugnant to the tenor of the contract; for, upon the face of the bill, who are the perſons to whom it is to be paid, and in what capacity muſt they reſpectively claim? Certainly, as payee or indorſee. Now who or what is the preſent plaintiff? He is not *payee*, becauſe there is another expreſsly appointed by name, i. e. Mrs. Shortland; neither is he *indorſee*, for Mrs. Shortland has never negociated the bill. But whether the Count upon the bill be good or bad, it may certainly be given in evidence, upon either of the common Counts, for money paid, had, and received, or upon the account ſtated, in caſe the plaintiff ſhall be unable to prove the fact of the acceptance. Lawes.

(*a*) Symonds v. Parminter and Barrow, 1. Wilſ. 185.

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Drawer v. Acceptor of a bill [illegible] by in[illegible] of payee.

MIDDLESEX, *ſſ.* Samuel Agar complains of John May, being, &c. for that whereas the ſaid Samuel Agar heretofore, to wit, on the fourth day of January A. D. 1782, at Weſtminſter, in the county of Middleſex aforeſaid, according to the cuſtom of merchants from time immemorial uſed and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto ſubſcribed, and the ſaid bill bearing date the day and year aforeſaid, then and there directed to the ſaid John May, by the name and deſcription of, &c. and by the ſaid bill requeſted the ſaid J. May, *ſeven days after the date of the ſaid bill, to pay to one Michael Keame or order the ſum of five pounds and five ſhillings*, and then and there delivered the ſaid bill to the ſaid M. Keame: and the ſaid Samuel Agar avers, that although the ſaid John May afterwards, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, accepted the aforeſaid bill of exchange, according to the ſaid cuſtom of merchants in that particular; and although the ſaid bill of exchange was afterwards, and after the end and expiration of the ſaid ſeven days therein mentioned and thereby appointed for the payment of the money therein ſpecified, to wit, on the fourteenth day of January in the year 1782 aforeſaid, at Weſtminſter aforeſaid, ſhewn and preſented to him the ſaid J. May for payment of the money therein ſpecified, according to the tenor and effect of the ſaid bill, and his aforeſaid acceptance thereof; yet he the ſaid

Samuel

Samuel Agar in fact further saith, that he the said John May did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay the money therein specified, or any part thereof, according to the tenor and effect of the said bill, and his aforesaid acceptance thereof, but therein wholly failed and made default, and refused and neglected so to do; whereby and by means whereof the said bill of exchange was afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, and according to the custom of merchants in that respect, returned to him the said Samuel Agar, and he the said Samuel Agar was then and there called upon for, and forced and obliged to pay, the money therein specified, whereof the said John May then and there had notice: by means of which several premises, and by force of the aforesaid custom and the law of merchants, he the said John May became liable to pay to the said Samuel Agar the said sum of money in the said bill specified; and being so liable, he the said John May, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. the said Samuel Agar to pay him the said sum of money in the said bill specified, when he the said John May should be thereto afterwards requested. (Money lent, money laid out, money had and received; account stated; and common conclusion.)

Drawer v. *Acceptor* of a bill made payable to *the order of* [redacted] drawer r[redacted] by indorsee. 1st Count states that the bill was negociated and [redacted] for non-payment by acceptor.

FOR that whereas the said plaintiff heretofore, to wit, on the thirty-first of October A. D. 1780, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, and the said bill bearing date the day and year aforesaid, then and there directed to the said defendant by the name and description of Mr. Richard Roberts, No. 72, Houndsditch, and by the said bill required the said defendant, three months after the date of the said bill, to pay to the order of him the said plaintiff, the sum of fifty pounds value received: and the said plaintiff avers, that the said defendant afterwards, to wit, on the day and year aforesaid, at &c. aforesaid, accepted the aforesaid bill, according to the custom of merchants in that particular, and that the same was afterwards, and before the payment of the money therein specified, or any part thereof, in due manner, and according to the custom of merchants in that particular, *indorsed over and negociated*, to wit, at London aforesaid, in the parish and ward aforesaid, whereof the said defendant had due notice: and the said plaintiff in fact further saith, that the said bill of exchange having been so indorsed and negociated as aforesaid, was afterwards, and at the end and expiration of the time appointed for the payment of the money therein specified, to wit, on the third of February A. D. 1781, at, &c. aforesaid, shewn and presented to the said defendant for payment

of the money therein ſpecified, according to the tenor and effect of the ſaid bill, his aforeſaid acceptance thereof, and the aforeſaid negociation of the ſame; yet he the ſaid plaintiff in fact further ſaith, that he the ſaid defendant did not, when the ſaid bill was ſo ſhewn and preſented to him as aforeſaid, or at any other time whatſoever, pay the money therein ſpecified, or any part thereof, but therein wholly failed and made default, and refuſed and neglected ſo to do; whereby, and by means whereof, the ſaid bill of exchange was afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in, &c. aforeſaid, and according to the cuſtom of merchants in that reſpect, returned to him the ſaid plaintiff, and he the ſaid plaintiff was then and there called upon for, and forced and obliged to pay the money therein ſpecified; whereof he the ſaid defendant afterwards, to wit, on, &c. laſt aforeſaid, had notice, to wit, at, &c. aforeſaid: by means of which ſaid ſeveral premiſes, and by force of the cuſtom and the law of merchants, he the ſaid defendant became liable to pay to the ſaid plaintiff the ſaid ſum of money in the ſaid bill mentioned, upon requeſt; and being ſo liable, &c. aſſumpſit accordingly. And whereas the ſaid plaintiff, on the ſaid thirty-firſt of October in the year 1780 aforeſaid, at, &c. aforeſaid, according to the cuſtom of merchants from time immemorial uſed and approved of within this kingdom, made his certain other bill of exchange, &c. &c. [as in firſt Count, till you have ſet out the bill, then go on thus] which ſaid bill of exchange the ſaid defendant afterwards, and before the payment of the money therein ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, upon ſight thereof accepted, according to the cuſtom, &c.: and the ſaid plaintiff avers, that the ſaid plaintiff *not having at any time* before, or at the end and expiration of the time appointed for the payment of the money in the ſaid laſt mentioned bill ſpecified, *indorſed over or negociated* the ſame, or ordered or appointed the money therein ſpecified to be paid to any perſon or perſons whatſoever, the ſaid defendant, by force of the cuſtom and the law of merchants in that particular, became liable to pay to the ſaid plaintiff the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, whereof the ſaid (defendant) had due notice; and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, and at the end and expiration of the time appointed for the payment of the money in the ſaid laſt mentioned bill ſpecified, to wit, on the third day of February A. D. 1781 aforeſaid, at, &c. aforeſaid, undertook, &c. to pay, upon requeſt, &c. (money laid out, &c. money had and received, and account ſtated): Yet the ſaid defendant, not regarding, &c. but contriving, &c. hath not as yet paid, &c. (although ſo to do this the ſaid defendant was requeſted by the ſaid plaintiff afterwards, to wit, on, &c. and often afterwards, to wit, at, &c. aforeſaid; and although the ſaid plaintiff hath not, at any time ſince the making of the ſaid ſecond promiſe and undertaking above mentioned, indorſed over or negociated the ſaid bill of exchange in that promiſe and undertaking mentioned, or ordered or

2d Count ſtates that the bill was never negociated.

Conclusion.

appointed the money therein specified, or any part thereof, to be paid to any person or persons whatsoever,) but he the said defendant to do this hath hitherto wholly refused, and still refuses so to do, to the said plaintiff his damage of, &c. Suit, &c.

LONDON, *ss.* E. J. P. T. G. and R. K. assignees of the debts, goods, and effects which were of John C. surviving partner of James C. deceased, being a *bankrupt* according to the form and effect of the several statutes made and now in force concerning bankrupts, complain of T. W, being, &c. of a plea of trespass on the case; for that whereas the said James and John C, which said James died before the bankruptcy of the said John C. leaving the said John C. him surviving, in the lifetime of him the said James, and before the said John C. became bankrupt, to wit, on the fourth of June A. D. 1784, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants from time immemorial used and approved of within this kingdom, made a certain bill of exchange in writing, the proper hand of one of them, on their (3) joint account, and in their (3) copartnership style and firm, (to wit, James and John C) being thereto subscribed, bearing date the day and year aforesaid, and then and there directed the said bill to the said Thomas W. by the name and addition of Mr. Thomas W. 36, Cornhill, and thereby required the said Thomas W. three months after date, to pay to their order twenty-five pounds thirteen shillings and sixpence, value received of the said James and John C. which he the said Thomas W. afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom: and the said Enos John, Thomas G. and Richard, assignees as aforesaid, aver, that the said bill afterwards, and before the payment of the money therein specified, or any part thereof, was in due manner, and according to the custom of merchants, *indorsed and negociated*, to wit, at L. aforesaid, in the parish and ward aforesaid; and that the said bill, having been so indorsed and negociated as aforesaid, was afterwards, and at the end and expiration of the time appointed by the said bill for the payment of the money therein specified, to wit, on the seventh of September in the year 1784 aforesaid, at London aforesaid, in the parish and ward aforesaid, shewn and presented to the said Thomas W. for payment of the money therein specified, according to the said custom, and the said Thomas W. then and there had notice of the said indorsement and negociation thereof, and was then and there required to pay the said sum of money therein specified, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsement and negociation of the same; but that the said Thomas W. did not, nor would at the said time when the said bill was so shewn and presented to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum

Assumpsit in B. R. by the Assignees of a *surviving partner bankrupt, drawers* of a bill of exchange, against *Acceptor.* 1st Count, upon a bill negociated.

(3) Lord Raym. 175. 1484. Doug. 630.

sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; and thereupon the said James and John C. in the lifetime of the said James, and before the said John C. became a bankrupt, as drawers of the said bill, by reason of such neglect and refusal of the said Thomas W. as aforesaid, were afterwards, to wit, on the first of October in the year 1784, at London aforesaid, in the parish and ward aforesaid, forced and obliged to, and did then and there necessarily pay to the holder of the said bill the said sum of money therein specified; whereof the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice: by means of which said several premises, and by force of the said custom, and by the law of merchants, the said Thomas W. then and there became liable to pay to the said James and John C. the said sum of money in the said bill specified, when he the said Thomas W. should be thereto afterwards requested, and being so liable, he the said Thomas W. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to pay them the said sum of money in the said bill specified, when he the said Thomas W. should be thereto afterwards requested. And whereas the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to wit, on the fourth day of June in the year 1784 aforesaid, at L. aforesaid, in the parish and ward aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made a certain other bill of exchange in writing, the proper hand of one of them, on their joint account, and in their copartnership style and firm, (to wit, James and John C.) being thereto subscribed, bearing date the day and year last aforesaid, and then and there directed the said last mentioned bill to the said Thomas W. by the name and addition of Mr. Thomas W. 36, Cornhill, and thereby required the said Thomas W. three months after date, to pay to their order twenty-five pounds thirteen shillings and sixpence, value received of the said James and John C. which said last mentioned bill he the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom: and the said Enos John, Thomas G. and Richard, assignees as aforesaid, aver, that the said last mentioned bill *not having been at any time indorsed and negotiated* for the payment of the money therein specified, ordered or appointed to be made to any person or persons whomsoever, the said Thomas W, by force of the said custom, and by the law of merchants, afterwards, and at the end and expiration of the time appointed by the said last mentioned bill for the payment of the money therein specified, to wit, on the said seventh of September in the year 1784 aforesaid, at L. aforesaid, in the parish and ward aforesaid, became liable to pay

2d Count, upon a bill not negociated.

pay

pay the same to the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt; whereof the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and being so liable, he the said Thomas W. in consideration thereof, then and there undertook, and faithfully promised the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to pay them the said sum of money in the said last mentioned bill specified, when he the said T. W. should be thereto afterwards requested. (Add a Count for work and labour, and quantum meruit.) Yet the said Thomas W. not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James and John C. in the lifetime of the said James, and the said John C. surviving partner as aforesaid, after the death of the said James, and before the said John C. became bankrupt, and the said Enos John, Thomas G. and Richard, assignees as aforesaid, since the bankruptcy of the said John C. in this behalf hath not paid the said several sums of money, or any part thereof, to them, or any or either of them, (although to pay the same he the said Thomas W. was oftentimes requested, as well by the said James and John C. in the lifetime of the said James, as by the said John C. surviving partner as aforesaid, after the death of the said James, and before the said John C. became bankrupt, and also by the said Enos John, Thomas G and Richard, assignees as aforesaid, since the bankruptcy of the said John C. to wit, on the first of November A. D. 1785, to wit, at L. aforesaid, in the parish and ward aforesaid,) but to pay the same, or any part thereof, to them, or any or either of them, he the said Thomas W. hath hitherto wholly refused, and still refuses, to pay the same, to the damage of the said Enos John, Thomas G. and Richard, assignees as aforesaid, of eighty pounds; and therefore they bring suit, &c. Pledges, &c.

Conclusion by *Assignees of a surviving partner bankrupt.*

LONDON, *ss.* If Isaac H. shall make you secure, &c. then put, &c. Joseph F. and Thomas G. late of London, merchants, so that they be before the lord the king on the morrow of All Souls, wheresoever, &c. to shew, that (*a*) "and" whereas heretofore, to wit, on the *second day of July*, "first day of August," in the year *of Our Lord* 1788 "aforesaid," at Bradford "aforesaid," to wit, at London aforesaid, in the parish *of St. Mary le Bow in the* "and" ward *of Cheap* "aforesaid," the said Isaac, who then and there carried on trade and commerce under the "said" style and firm of H. and T. according to the "said" usage and custom of merchants *from time immemorial used and approved of within this kingdom*, made a certain "other" bill of exchange in writing, subscribed with his own proper hand in the style or firm aforesaid, bearing date the day and year "last" aforesaid, and then and there

Declaration by *original* in B. R. by *Drawer* on two inland bills of exchange, *for different sums on different dealers*, against the *Acceptor.*

(*a*) In this first Count omit the words within inverted commas.

directed

directed the said "last-mentioned" bill to the said Joseph "Free-"man" and Thomas, by the names and addition of Messrs. F. and G. in London, and thereby required the said Joseph "F." and Thomas, two months after the date thereof, to pay to the order of "the said" Joseph V. and Josiah J. (by the names and description of Messrs. V. and J.) sixty pounds fourteen shillings and sixpence, "seventy-one pounds fourteen shillings and sixpence," value received, as advised, and then and there delivered the said "last-mentioned" bill to the said Joseph V. and Josiah J.: and the said Isaac says, that the said Joseph F. and Thomas afterwards, to wit, on the day and year "last" aforesaid, at L. aforesaid, in the parish and ward aforesaid, accepted the said "last "mentioned" bill, according to the said custom; and that the said "last-mentioned" bill afterwards, and when the same became payable, to wit, on the *fifth of September*, "fourth of October," in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, was shewn and presented to the said Joseph F. and Thomas for payment, according to the custom, and the said Joseph F. and Thomas were then and there required to pay the said sum of money in the said "last-mentioned" bill specified, according to the tenor and effect of the said "last-mentioned" bill, and of their said acceptance thereof; but that the said Joseph Freeman and Thomas did not, at the said time when the said "last-mentioned" bill was so shewn and presented to them as aforesaid, or at any other time, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; and that thereupon the said Isaac, as drawer of the said "last-mentioned" bill, was afterwards, to wit, on the *sixth of September*, "sixth of October," in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, necessarily obliged to take up the said "last-mentioned" bill, and to pay the said sum of money therein specified; whereof the said Joseph F. and Thomas afterwards, to wit, on the day and year last aforesaid, there had notice: by means of which said several premises, and by force of the said custom, and by the law of merchants, the said Joseph F. and Thomas then and there became liable to pay to the said Isaac the said sum of money in the said "last-mentioned" bill specified, upon request; and being so liable, they the said Joseph F. and Thomas, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said Isaac, to pay him the said sum of money in the said "last-mentioned" bill specified, when they the said Joseph F. and Thomas should be thereto afterwards requested. (2d Count like the first, except omitting the words in italic, and inserting the words within inverted commas, (*a*) which are omitted in the first Count, being on the acceptance of another bill similarly circumstanced. There were also other Counts in assumpsit for the consideration of the acceptances; money had and received, and on an account stated, with a common breach to the whole in non-payment of the money.)

(*a*) See ante 211. Assumpsit for Wages, for a similar and very useful mode of abridging Pleadings.

MIDDLESEX.

MIDDLESEX. For that whereas the said J. on the twenty-seventh day of November A. D. 1770, at Westminster, according to the usage and custom of merchants, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year, and then and there directed the said bill to one E. and C. (which said C. hath since become a bankrupt, and, as such, hath been since duly discharged from the causes of action in the said Declaration mentioned, by force of the statutes made and now in force concerning bankrupts,) the said E. and C. then and there being copartners in trade, and thereby required the said E. and C. seven days after the date thereof, to pay to J. J. and J. B. by the name and description of, &c. or their order, the sum of sixteen pounds thirteen shillings and three pence sterling, value in account, without further notice, and then and there delivered the said bill to the said J. J. and J. B. which said bill of exchange afterwards, and before the time appointed for payment of the said sum of money therein contained, the same remaining unpaid, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county aforesaid, was *presented* and shewn by the said J. J. and J. B. to the said E. and C. before the said E. became a bankrupt, for their acceptance thereof; and thereupon the said E. and C. before the said E. became a bankrupt, became liable to pay to the said J. J. and J. B. the said sum of money specified in the said bill, according to the tenor and effect of the said bill: and the said J. B. in fact saith, &c. (the Declaration then states, that the payees presented the bill when due to the defendant and his partner for payment, which being refused, the plaintiff became liable to pay the amount, and accordingly took up the bill, whereof the defendant and his partner, before his bankruptcy, had notice;) by means whereof they became liable to pay the plaintiff, and, before the bankruptcy, promised payment. (2d Count stated the bill to have been directed "to the said E and C. before the said E. became a bankrupt, and which said E. hath been duly discharged in form aforesaid." It then proceeded as in the first Count, as far as the refusal of payment, but, instead of averring that the bill was returned and taken up, it alledged that, the money remaining unpaid, the holders indorsed and delivered the bill to the plaintiff, whereof the said E. and C. afterwards, and before the said E. became bankrupt, on, &c. at, &c. had notice. There were other Counts upon indebitatus assumpsit, stating the debts to have been due, and the promises made by the said E. and C. before the said E. became bankrupt.) G. WOOD.

Declaration by Drawer on a bill of exchange *inland* against *Acceptors, partners*, one of them since a *bankrupt*.

FOR that whereas the said Charles heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid,

Declaration on an *inland* bill of exchange. *Drawer* v. *Acceptor*. Bill payable *to his order* only, with an averment that he never indorsed it, and where one (1) *reputed partner* accepted for himself and the other.

(1) Lord Raym. 175. 1484 Doug. 630.

aforesaid, upon the said defendants, by the name and description of, &c. and thereby required the said defendants, three weeks after the date thereof, to pay *to the order of him the said plaintiff* eleven pounds value, on account with him the said plaintiff; which said bill of exchange he the said *Charles for himself, and the said Thomas in that behalf*, afterwards, and before the time appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. duly *accepted*, according to the custom of merchants, for payment of the money therein mentioned, according to the tenor and effect of the said bill; whereby, and by means of which said several premises, and according to the said custom and the law of merchants, they the said defendants became liable to pay the said sum of money in the said bill of exchange mentioned, according to the tenor and effect of the said bill: and the said plaintiff avers, that the said James *did not*, at any time before, nor at or after the time appointed by the said bill for payment of the money therein mentioned, *indorse* the same, or order the contents thereof to be paid to any person or persons whatsoever, to wit, at, &c. whereof they the said defendants afterwards, and whilst the said bill was unindorsed, to wit, on, &c. there had notice: in consideration of which said several premises, they the said defendants afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said bill mentioned, when they the said defendants should be thereunto afterwards requested. And whereas the said plaintiff heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain other bill of exchange in writing, bearing date the day and year aforesaid, upon the said defendants, by the name and description of, &c. and thereby required the said defendants, three weeks after the date, to pay to the order of him the said plaintiff eleven pounds value, on account with him the said plaintiff; which said last-mentioned bill of exchange afterwards, and before the time thereby appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. was duly accepted by and on behalf of the said defendants, according to the said custom; whereby, and by reason of which said several premises, and according to the custom and by the law of merchants, they the said defendants became liable to pay the said sum of money in the said last-mentioned bill specified, according to the tenor and effect of the said bill: and the said plaintiff avers, that he the said plaintiff did not at any time before or after the time appointed by the said bill for the payment of the money therein specified, indorse the said bill, or order the money therein mentioned to be paid to any person or persons whatsoever, to wit, at, &c. whereof the said defendants afterwards, and after the time appointed by the said last-mentioned bill for payment of the money specified, and whilst the said last-mentioned bill was unindorsed, to wit, on, &c. at, &c. had notice: in consideration of which said several premises, they the said defendants afterwards, to wit, on,

[Margin note: 2d Count, stating an acceptance generally.]

on, &c. at, &c. undertook, &c. &c. (Add Counts for goods sold, &c.; common money Counts; and common conclusion, with this addition, after stating a request): And although the said plaintiff hath not at any time since the making the said promises and undertakings in the said first and second Counts above mentioned, indorsed over or negociated the said bills of exchange, or either of them, in those promises and undertakings mentioned, or appointed the money therein, or in either of them specified, to be paid to any person or persons whatsoever, but, &c. &c.

T. Barrow.

Declaration by Partners on an inland bill of exchange drawn by a Clerk by procuration of one of the copartners, against the Acceptor, a single trader, but was drawn upon as under a firm, to pay to the order of the Clerk. See Bailey on Bills of Exchange, 54.

(a) Lord Raym. 175. 1484. Doug. 630. 12. Mod. 564. Comb. 450. 12. Mod. 346. 10. Mod. 110.

AND whereas the said Thomas, on the behalf of himself and the said Charles his copartner in trade, by one G. Smith, their (a) *servant* in that behalf, on the tenth day of February A. D. 1793, at London, to wit, at Westminster, in the county of Middlesex, according to the usage and custom of merchants, *procured* to be drawn and made their certain bill of exchange in writing, bearing date the day and year aforesaid, upon the said Thomas Faulding, by the name and description of Messrs. Thomas Faulding and Co. Coventry-street, and thereby required the said Thomas Faulding to pay to the order of him the said G. Smith, six weeks after the date of the said bill, seventy-two pounds fifteen shillings and six pence, value received of the said Charles and Thomas Tatlock; which said bill of exchange he the said Thomas Faulding afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, according to the usage and custom of merchants in that particular, accepted; by reason whereof, and by force of the custom and law of merchants, the said T. F. became liable to pay to the said Charles and Thomas Tatlock the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of his aforesaid acceptance thereof; and being so liable, &c. (assumpsit accordingly.)

T. Barrow.

Declaration by original on a bill of exchange by Drawer v. Acceptor's two partners, one being outlawed, payable at Madrid, and protested per quod, was obliged to pay bill with interest, &c. charges, &c.

LONDON, *ss.* H. P. late of London, merchant, was attached to answer T. S. in a plea of trespass on the case, &c. and whereupon the said T. S. by A. B. his attorney, complains, that whereas the said H. and L. B. late of London, merchant; *which said L. by due process of law, had in the court of the said lord the king, before the king himself, was outlawed, and still is outlawed, at the suit of the said T. in the same plea, as by the record thereof, now remaining in the said court here in full force, more fully appears,* on the first day of April A. D. 1742, at L. to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, was indebted. (Counts for work and labour, and quantum meruit; money laid out and expended, lent and advanced, had and received.) And whereas the said J. on the twenty-eighth day of June A. D. 1749, at L. aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants, made his certain bill of

exchange

exchange in writing, his own hand being thereunto ſubſcribed, bearing date the ſame day and year, and directed the ſaid bill to the ſaid H. and L. then being reſident and uſing commerce at Bilboa in foreign parts, to wit, in Spain, and thereby requeſted the ſaid H. and L. *at uſance*, to pay that his firſt bill of exchange at Madrid in Spain aforeſaid, to the order of J. E. Clive and Co. dollars 4000 in gold or ſilver, as to the exchange known to them that day, value in account with the ſaid gentlemen as per advice; which ſaid bill of exchange afterwards, that is to ſay, on the tenth day of Auguſt in the year aforeſaid, at Bilboa aforeſaid, the ſaid

Acceptance.

H. and L. who, &c. *accepted*, according to the uſage and cuſtom of merchants: and the ſaid T. in fact ſays, *that an uſance* between

Averment of uſance.

L. aforeſaid and Madrid in foreign parts, to wit, in Spain aforeſaid, is, and from time whereof the memory of man is not to the contrary hath been, two months: and the ſaid H. and L. who, &c. did not, nor did either of them pay to the ſaid J. E. Clive and Co. the ſaid money contained in the ſaid bill of ex-

Refuſal to pay.

change, nor any part thereof, but *refuſed and neglected to pay the ſame*. whereupon afterwards, to wit, on the twenty-firſt day of September in the ſame year, the ſaid J. E. Clive and Co. *having*

Made no order.

made no order concerning the payment thereof, the ſaid bill of

Proteſt for non-payment.

exchange, at the requeſt of the ſaid J. E. Clive, was *proteſted* at Madrid aforeſaid, according to the uſage and cuſtom of merchants, upon the *non payment* of the contents thereof, by reaſon whereof, he the ſaid T. according to the uſage and cuſtom of merchants, became liable to pay to the ſaid J. E. C. and Co. the ſaid contents of the ſaid bill of exchange, together with *intereſt, exchange, re-exchange, coſts, and damages*, which accrued from the delay and retardment of the payment thereof, and being ſo liable, &c. (paid the contents of the bill,) and the ſum of thirty-ſix pounds fifteen ſhillings of lawful, &c. with intereſt, &c. of which, &c. ſaid H. and L. had *notice*. and by reaſon, &c. and by force of the uſage and cuſtom, &c. they the ſaid H. and L. who, &c. became liable to pay to the ſaid T. the ſaid contents, &c. and the ſaid ſum of thirty-ſix pounds fifteen ſhillings ſo paid, &c.; and being ſo liable, &c. (aſſumpſerunt.) (2d Count on a ſimilar bill for one thouſand five hundred dollars, payable in Bilboa, to the order of one M. D. Q.; which defendants accepted. Averment that an uſance is two calendar months. Proteſted, became liable to pay, &c. with intereſt, &c. amounting to nine pounds eight ſhillings and ſeven pence.) Yet, &c. not regarding their ſaid ſeveral pro-

Concluſion.

miſes and undertakings, &c. hath not paid, &c. although the ſaid H. and L. who, &c. afterwards, and before *the ſaid outlawry pronounced*, that is to ſay, on the ſaid ſecond day of April in the year laſt aforeſaid, and often afterwards, at L. aforeſaid, in the pariſh and ward aforeſaid, were requeſted by the ſaid Thomas to pay the ſame: but the ſaid H. and L. unto the time of *pronouncing the ſaid outlawry* againſt the ſaid L. have wholly refuſed; and the ſaid H. doth ſtill refuſe to pay the ſame to the ſaid Thomas; and the ſame are ſtill unpaid, to the damage of the ſaid Thomas of one



one thousand three hundred pounds; and thereupon he brings suit, &c.

And the said H. by A. B. his attorney, comes and prays leave to imparl thereto, before our lord the king, until from the day of Easter, in fifteen days, wheresoever our said lord the king shall be in England, and he has it, &c. the same day is granted to the said Thomas, &c. At which day, before our said lord the king at Westminster, comes as well the said Thomas as the said H. by their said attornies: and hereupon the said H. prays further leave to imparl thereto, until the morrow of the Holy Trinity, wheresoever our said lord the king shall then be in England, and he has it, &c. the same day is given to the said Thomas, &c. At which day, before our said lord the king, comes as well the said Thomas as the said H. by their said attornies: and hereupon the said H. prays further leave to imparl thereto, from the day of St. Michael, in three weeks, wheresoever our said lord the king should then be in England, and he has it, &c. the same day is given to the said Thomas. At which day, before our said lord the king at Westminster, comes as well the said Thomas as the said H. by their said attornies: and hereupon the said H. prays further leave to imparl thereto, from the day of Easter, in fifteen days, wheresoever our said lord the king should then be in England, and he has it, &c. the same day is given to the said Thomas, &c. And now at this day, before our said lord the king at Westminster, comes as well the said Thomas as the said H. by their said attornies: and the said H. defends the wrong and injury, and says, that the said Thomas ought not to have or maintain his said action against him, because he says that there is *not any record of the outlawry* of the said L. upon the said writ in the plea aforesaid alledged in the said declaration; and this the said H. is ready to verify; wherefore he prays judgment, if the said Thomas ought to have or maintain his said action against him, &c. And the said H. for further plea in bar, by leave of the court here in this behalf granted to him, according to the form of the statute in this case made and provided, further says, that the said Thomas ought not to have or maintain his said action against him; because he says, that the said L. in the said declaration named before and at the time of the obtaining of the original writ on which the outlawry by the declaration is above supposed to be obtained and had against the said L. and continually from that time hitherto, did dwell and was commorant, and also before and at the time of awarding the writ of exigent thereon, and continually from that time hitherto, did dwell and was commorant, and is now dwelling and commorant, in parts beyond the seas, and out of the limits of this realm, to wit, at Bilboa in the kingdom of Spain, in the said declaration mentioned; and that the county of Cornwall, in this kingdom, was and is the shire next to the place where the said L. at the time of the writ of exigent awarded, had his dwelling; and that

Plea Imparlance.

Further Imparlance to Trinity.

Further Imparlance to Michaelmas.

Further Imparlance.

1st, Nul tiel record of outlawry.

2d, That the other defendant resided in Spain, and that Cornwall 's the next English county, and traverses that London is.

that not any writ of proclamation thereon was awarded, made, or directed to the sheriff of the county of Cornwall; *without this*, that at the time of the obtaining the original writ, or at any time afterwards, the said L. did dwell, or was commorant, or conversant, at London aforesaid, or at any other city, town, or place whatsoever within this kingdom: and this the said H. is ready to verify; wherefore he prays judgment, if the said Thomas ought to have or maintain his said action, in the form aforesaid, against him, &c. D. Poole.

Replication, that there is such a record .. setting forth the original writ.

And the said Thomas prays leave to imparl to the said plea, until the morrow of the Holy Trinity, wheresoever our said lord the king shall then be in England, and he has it, &c. the same day is given to the said H. &c. At which day, before our said lord the king at Westminster, come as well the said Thomas as the said Henry by their said attornies: and hereupon the said Thomas prays of the court here that the said original in this suit filed, and remaining in the said court here, may be set forth here, and it is granted to him: the tenor of which said writ follows in these words, to wit, Geo. the Second, &c. To the sheriffs of London. If Thomas Symmons shall give you security to prosecute his suit, then put, by sureties and safe pledges, H. P. of London merchant, and L. B. late of London merchant, that they be before us on the morrow of the Holy Trinity, wheresoever we shall then be in England, to shew, that whereas the said H. and L. on the first day of April 1742, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, were indebted to the said Thomas, &c. (insert the writ,) to the damage of the said Thomas of one thousand three hundred pounds as he saith, and have ye there the names of the pledges and this writ: witness Thomas Archbishop of Canterbury, and other guardians and justices of the kingdoms, at Westminster, the 13th May in the sixth year of the reign; Jones;—as by the original writ, now remaining affiled of record in the said court here at Westminster aforesaid, fully appears. And hereupon the said Thomas for replication saith, that by reason of any thing by the said H. above in pleading alledged, he ought not to be barred from having and maintaining his action aforesaid against him; because, as to the said plea of the said N. first above pleaded, he the said Thomas saith, *that there is such a record of the outlawry* of the said L. upon the said writ in the plea aforesaid, at the suit of the said Thomas, in the said court here remaining, as the said Thomas hath in his said declaration above alledged; and this he is ready to verify by that record, as it appears in the Term of St. Hilary, in the 17th year of the reign of the said lord the king, upon the seventh roll; and the said Thomas prays, that the said Term and roll, by the said court here, may be seen and inspected.

Demurrer to 2d plea.

And the said Thomas, as to the said plea of the said H. lastly above pleaded, saith, that he ought not to be barred from having his said action against the said H. because the said Thomas saith, that the said plea, by

the

the ſaid H. laſtly above pleaded, and the matters therein contained, are not ſufficient in law to bar the ſaid Thomas from having his ſaid action againſt him ; to which plea, in manner and form aforeſaid pleaded, and the matter therein contained, the ſaid Thomas hath no need, nor is he by the law of the land in any wiſe bound to anſwer : and this, &c. : wherefore, for want of a ſufficient plea in this behalf, the ſaid Thomas prays judgment and his damages, by reaſon of the premiſes to be adjudged to him, &c.

WILLIAM WYNNE,
RICHARD DRAPER.

And the ſaid H. &c. ſince he hath above alledged ſufficient matter in law in his ſaid plea laſtly above pleaded, and becauſe he the ſaid Thomas hath not anſwered to the ſaid plea of the ſaid H. by him laſtly above pleaded, nor hath hitherto in anywiſe denied the ſame, the ſaid H. as heretofore prays judgment, if the ſaid Thomas ought to have or maintain his ſaid action thereof againſt him, &c. And the ſaid H. ſaith, that the ſaid plea of the ſaid Thomas, in manner and form aforeſaid above pleaded, by way of reply to the ſaid plea of the ſaid H. by him firſt above pleaded, and the matter therein contained, are not ſufficient in law for the ſaid Thomas to have and maintain his ſaid action thereof againſt him ; and that he the ſaid H. is not bound nor obliged by the law of the land to make any anſwer thereto; and this, &c. : wherefore for want of ſufficient replication in this behalf, the ſaid H. as before prays judgment ; and that the ſaid Thomas may be barred from having or maintaining his aforeſaid action thereof againſt him, &c. And for cauſes of this demurrer in law, according to the form of the ſtatute in ſuch caſes lately made and provided, the ſaid H. ſheweth to the court here theſe cauſes following, to wit, for this, that it appears by the ſaid replication, the writ upon which it is above ſuppoſed the ſaid L. was outlawed, is not, nor was the ſame writ upon which the ſaid Thomas hath above in form aforeſaid declared againſt the ſaid H. but another, and variant from the original writ recited in the ſaid declaration of the ſaid Thomas, and for this, that the ſaid declaration is double, uncertain, and wants form. D. POOLE.

Demurrer to replication.

Cauſes.

And the ſaid Thomas ſaith, that the ſaid plea of the ſaid Thomas as in manner aforeſaid above pleaded by way of reply to the ſaid plea of the ſaid H. by him firſt above pleaded, and the matter therein contained, are good and ſufficient in law for him the ſaid Thomas to have and maintain his ſaid action thereof againſt the ſaid H. ; which plea, by way of reply, and the matters therein contained, the ſaid Thomas is ready to verify and prove, as the court ſhall direct. And becauſe the ſaid H. hath not anſwered the ſaid plea, nor hitherto hath in any wiſe denied the ſame, the ſaid Thomas, as before, prays judgment, and his damages by reaſon of the premiſes to be adjudged to him, &c. becauſe the court of

Joinder.

Prays judgment.

 our

our ſaid lord the king now here is not yet adviſed about giving judgment of and upon the ſeveral premiſes whereon the ſaid parties have above put themſelves on the judgment of the court; therefore day is given to the parties aforeſaid to be before our lord until from the day of St. Michael in three weeks, whereſoever he ſhall then be in England, to hear judgment of and upon the premiſes, for that the court of our ſaid lord the king at Weſtminſter, is not yet adviſed, &c. (here inſert continuances from Term to Term until from the day of the Holy Trinity in three weeks.) At which day, before our ſaid lord the king come as well the ſaid Thomas as the ſaid H. by their ſaid attornies; whereupon all and ſingular the premiſes being ſeen, and by the court of our ſaid lord the king now here fully underſtood, and mature deliberation being thereupon had, it appears to the court of our ſaid lord the king now here, that the plea of the ſaid H. laſtly above pleaded, and the matters therein contained, are not ſufficient in law to bar the ſaid Thomas from having his ſaid action againſt him the ſaid H.; and that the ſaid plea of the ſaid Thomas, in manner and form aforeſaid above pleaded, by way of reply to the plea of the ſaid H. by him firſt above pleaded, and the matters therein contained, are good and ſufficient in law for him the ſaid Thomas to have and maintain his ſaid action againſt the ſaid H. as he the ſaid Thomas hath above alledged; by reaſon whereof the ſaid Thomas ought to recover againſt the ſaid H. his damages by occaſion of the premiſes; but becauſe it is unknown to the court of our ſaid lord the king now here what damages the ſaid Thomas hath ſuſtained as well by occaſion of the premiſes as for his coſts and charges by him about his ſuit in this behalf expended, the ſheriffs are commanded, that by the oath of twelve, &c. they diligently inquire what damages the aforeſaid Thomas hath ſuſtained, as well by the occaſion of the premiſes aforeſaid as for his coſts and charges by him about his ſuit in this behalf expended; and the inquiſition which they ſhall thereupon take they ſend to the ſaid lord the king from the day of St. Martin in fifteen days, whereſoever he ſhall then be in England, under the ſeal and the ſeals, &c. the ſame day is given to the ſaid Thomas, before the ſaid lord the king, whereſoever, &c. At which day, before our ſaid lord the king at Weſtminſter comes the ſaid Thomas, by his ſaid attorney; and the ſheriffs of London, to wit, E. F. eſquire and C. D. eſquire, by virtue of the writ of the ſaid lord the king to them thereupon directed, returned here a certain inquiſition, indented and taken before them at Guildhall, in the city of L. in the pariſh of St. Mary Baſſiſhaw, in the ward of Baſſiſhaw, in the ſame city, on the 24th November in the twenty-firſt year of the reign of our lord the preſent king of Great Britain, &c. by virtue of that writ, by the oath of twelve, &c.; by which it is found, *that* the ſaid Thomas ſuſtained damages by reaſon of the premiſes aforeſaid, beſides his coſts and charges about his ſuit in this behalf expended, to one thouſand three hundred pounds, and for his coſts and charges aforeſaid, to twenty-ſeven ſhillings and fourpence: and thereupon, foraſmuch as the court of our ſaid lord the king now here is not as yet adviſed about giving judgment of

Cur. adv. vult.

Continuance.

Judgment for plaintiff.

Writ of inquiry awarded.

Sheriffs return.

of and upon the premises, day is therefore given to the said Thomas to be before our lord the king in eight days of St. Hilary, wheresoever our lord the king shall then be in England, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon. At which day, before our said lord the king at Westminster comes the said Thomas, by his attorney aforesaid: whereupon, the premises being seen and fully understood by the court of our said lord the king here, and mature deliberation had thereon, it is considered that the said Thomas do recover from the said H. his damages aforesaid by the said inquisition in form aforesaid found, and also ninety six pounds twelve shillings and eightpence adjudged to the said Thomas by the court of our said lord the king now here at his request, for increase of his said costs and charges; which said damages in the whole amount to the sum of one thousand three hundred and ninety-eight pounds; and the said H. in mercy, &c. Final judgment.

In Michaelmas Term 1747, a writ of inquiry of damages was executed by rule of court before the lord chief justice Lee, when the inquest found damages generally for the plaintiff for one thousand three hundred pounds, the whole damages laid in plaintiff's declaration. Parminter, in that same Term, moved in arrest of the plaintiff's judgment, and made three objections.

First, that there was no such custom of merchants as was set out upon the plaintiff's declaration, and that the *acceptor* of the bill of exchange (afterwards protested for non-payment, and paid to the payee by the drawer, with the interest, exchange, re exchange, costs, and damages) was not by law liable *to the drawer*, without a previous assignment or indorsement of such bill to him by the payee.

That the demurrer to the plaintiff's replication after issue joined, was a discontinuance of the suit, but it was the defendant's own demurrer, for the defendant having pleaded that there was no such record of outlawry as the plaintiff had alledged, the plaintiff replied there was such a record, and thereupon issue was joined.

For that the declaration had not set forth the *value* of the four thousand dollars mentioned in the sixth Count, nor the value of the fifteen hundred dollars mentioned in the seventh Count.

But the court, after solemn argument and time taken to consider in Hilary Term following, was unanimously of opinion as to the first objection, that the plaintiff's action was well brought, and that by the custom of merchants the defendants were bound by their acceptance, and that an indorsement by the payee was not necessary, and the rather for that in the present case the plaintiff had made title another way, viz by payment of money, and there-fore gave judgment for the plaintiff. As to the two other objections, they were of opinion that they were of no weight. The nineteenth of February following, plaintiff signed judgment, but not being able to get the costs taxed until the twenty-fifth of April, he was delayed from proceeding against the defendants bail so soon and so effectually as otherwise he would have done. And in order to prevent proceedings against the bail, a writ of error was brought and allowed the thirtieth of April last, and the transcript of the record was brought on the thirtieth of May following, the day parliament was prorogued, so that nothing could be done the last session of parliament. The plaintiff in error assigned several errors, namely general errors, and the three following

Assignments in Error.—First, that there is no original writ between the said parties of the plea in the said declaration mentioned, filed upon record in the custody of the keeper of the writs in the said court of the said lord the king of Hilary Term, in the seventeenth year of his present majesty's reign. Secondly, that it doth not appear that the said Thomas Symmons hath found pledges to prosecute his suit. Thirdly, that there is not any writ of inquiry of damages between the said parties, in the said plea filed of record of Michaelmas

Term of the twenty-first year of the reign of the said lord the king, remaining in the custody of the keeper of the writs of the said court of our said lord the king; and the plaintiff in error prayed a certiorari to be directed to the keeper of the writs, to certify the truth of the premises; which certiorari ought to have been awarded to the lord chief justice of B. R. in whose custody the writs are, and who is to certify them. The plaintiff in error has since procured a certiorari to be returned by the said lord chief justice; by which return it is certified, that there is no such original writ, or writ of inquiry of damages, as are mentioned in the assignment of errors And the defendant in error has since come in voluntarily, and alledged that there is an original writ between the said Thomas S. and H. P. and L. B. of the plea in the declaration mentioned, filed of record in the said court of our said lord the king, before the king himself of the Term of the Holy Trinity, in the sixteenth and seventeenth years of his present majesty's reign; which said original warrants the declaration and judgment; and the defendant in error hath also prayed a writ of certiorari to the lord chief justice, who hath certified the said original writ, and the continuance thereof, and the defendant hath thereupon pleaded that there is no error.

The only considerable question in point of law (for with respect to the justice and equity of the case there can be none) therefore is, whether a *drawer* of a bill of exchange *accepted generally* by the *drawee* can in his own name, without a previous assignment or *inderfement* from the *payee*, maintain a special action on the case against the acceptor, and recover the money so paid; and the defendant in error humbly hopes, by the rules of law, and by the custom of merchants, he can maintain such action, and that such actions, and the proceedings therein, are right and agreeable to the rules and principles of law and justice; and therefore presumes the judgment of the court of B. R. is right, and shall be affirmed with exemplary costs, (among many others,) for the following reasons: Because the plaintiff in error hath not controverted the fact of the custom, that there is such a custom of merchants, as is set forth in the declaration of the defendant in error, to make the *acceptor* of a bill of exchange liable to an action by the drawer, who, after the bill hath been accepted and protested for non-payment, had paid the contents thereof to him, to whom it was made payable, and this is a good and reasonable custom. It is admitted by the plaintiff in error, that in case the defendant S. had taken an *assignment* or *indorsement* of the two bills of exchange from the two payees thereof, that he might have maintained this action in his own name; but such assignment or indorsement is not necessary, either by the custom of merchants, or required by law in the present case; and the defendant S. the drawer, has entitled himself by law to bring this action, by having paid these two bills to the payee, with interest, exchange and re-exchange, costs and damages; which bills the acceptor, by his acceptance, made himself liable to, and ought to have paid.

The acceptance of a bill of exchange amounts to a promise in law to pay; and this action of assumpsit against the *acceptor* is founded upon good *consideration*; upon the consideration of the acceptor having effects of the drawer in his hands at the time of his acceptance; and a *general* acceptance (as in the present case) is an admission by the acceptor, that he is debtor to the drawer for so much money, and that he hath effects or money in his hands of the drawer's to answer the payment of such bill Every bill of exchange imports a command to the drawee to pay his acceptance, and is not only an admission of effects or money in his hands sufficient to pay, but it is an undertaking by the acceptor, as well with respect to the drawer as the payee, to pay the bill, and every undertaker is bound by law to perform his undertaking.

The plaintiff has among other errors assigned, that the defendant in error hath not found any pledges to prosecute his suit; but the defendant humbly insists, that the want of such pledges is no error; and if it was, that the plaintiff could not now take advantage of it. And the plaintiff hath also assigned for error, that there was not any writ of inquiry of damages affiled of record by the defendant of Michaelmas Term, in the twenty-first year of his present majesty; but in case no such writ of inquiry had been filed, the defendant in error also insists, that the want thereof is aided by act of parliament, a writ of inquiry being a judicial writ. And as to the judgment given for the defendant in error on the two demurrers above mentioned, the defendant apprehends, that both these pleas are ill; and amongst other reasons, for that

they

they were not pleaded in bar, and that neither of them was pleadable in bar to the action. And it is humbly hoped, that the judgment given for the plaintiff in the action, and the now defendant in error, shall be affirmed with exemplar costs. H. BANKS, R. DRAPER

1. Wilf. 185. "An action on a bill o exchange lies for the drawer against th drawee, after he has accepted it.

By PAYEE against DRAWER, &c.

Payee v. Drawer, 1st Count for non-acceptance by drawee, with averment that plaintiffs have not indorsed the bill payable to *their joint order.*

FOR that whereas the said (defendant) heretofore, to wit, on, &c. at, &c. according to the custom of merchants in that respect used and approved of, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid, upon one J. S. by the name and description of, &c. and by the said bill required the said J. S. to pay to the said (plaintiffs), by the name of, &c. or to their joint order or demand, fifteen hundred pounds for value received, and then and there delivered the said bill to the said (plaintiffs), which said bill the said (plaintiffs) afterwards, to wit, on, &c. at, &c. shewed and presented to the said J. S. for his acceptance thereof, and then and there required him to accept the same, but the said J. S. did not then and there, or at any other time whatsoever, accept the said bill, and then and there wholly refused ever to accept or pay the same; whereof the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by reason of which premises, and according to the custom and by the law of merchants, the said (defendant) became liable to pay to the said (plaintiffs) the said sum of, &c. in the said bill specified, when he the said (defendant) should be thereto afterwards requested; and being so liable, he the said (defendant), in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. when he the said (defendant) should be thereto afterwards requested. And whereas the said defendant on, &c. at, &c. according to the custom of, &c. in that respect used and approved, made and drew his certain other bill of, &c. in writing, bearing date, &c. upon one J. S. by the names of, &c. and by the said last mentioned bill required the said J. S. to pay to the said (plaintiffs), by the name of &c. fifteen hundred pounds sterling on demand to their joint order for value received, and then and there delivered the said last-mentioned bill to the said (plaintiffs), which said last mentioned bill the said (plaintiffs) afterwards, to wit, on, &c, at, &c. shewed and presented to the said J. S. for his acceptance thereof, and then and there required him to accept the same; but the said J. S. did not then, or at any other time whatsoever, accept the said last-mentioned bill, but then and there wholly refused ever to accept or pay the same; whereof the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by reason of which premises, and according to the custom and the law of merchants, he the said (defendant) became liable to pay to the said (plaintiffs) the said sum of, &c. in the said last-mentioned bill specified, when he the said (defendant) should be thereto afterwards requested; and being so liable, he the said (defendant), in consideration thereof, afterwards,

to wit, on, &c. at, &c. undertook, &c. when he should be thereto afterwards required: and the said plaintiffs aver, that they have not yet indorsed over or negociated the said last-mentioned bill of exchange, or ordered or appointed the money therein specified to be paid to any person or persons whatsoever, but the said last-mentioned bill is still in their hands and possession, as legal holders thereof, not indorsed over or negociated, to wit, at, &c.

Payee v. Acceptor (a), with the cases on acceptance.

(a) 2 Bl. Comm. 470. Burr 1674. Bull Ni. Pri. Ed. 1790. 12. Mod. 410, 211. 1 Ld. Raym. 575 Com. 76. Burr. 1672. 1674. 2 Str. 955. Burr. 1663. Doug. 284. 1 Atk. 611. Str. 1000. Bavenstock v. Titter, B. R. M. 24 G. III. Str. 817. 2. Wilf. 9. Str. 1195. p. 418. f. 20. b. 2. c. 10. f. 18.

FOR that whereas one W. S. heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date the   day &c. aforesaid, upon the said (defendant), by the name of T. T. No. 13, Smithfield, London, and thereby required the said (defendant) to pay to the said (plaintiff), by the name of Mr. T. C. or order, two months after date of the said bill, one hundred pounds for value received, and then and there delivered the said bill of exchange to the said (plaintiff), which said bill he the said (defendant) afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants in that particular, accepted; by reason whereof, and by force of the custom and the law of merchants, the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill, and of the aforesaid acceptance thereof; and being so liable, &c. (Promise to pay, &c. according to the tenor and effect of the said bill and his aforesaid acceptance thereof. Common conclusion.)

12. Mod. 410. 286. Burr. 286 182. Str. Str. 221. 1195. 217. Molloy, p. 443. 444. 453. Burr. 1672. 1. T. Rep. 185. Str. 1152. Cowp. 574. Str. 214. 11. Mod. 190. Comb. 452. 3. Bac. Abr. 611. 2. Str. 1000. Lutw. 899. Beawes, f. 31. 1. Ed. 42. 1. Ed. 419. Beawes, f. 228. 1. Ed. p. 444. Marius, 2. Ed. 16. Molloy, 18. 2. Str. 2. Ld. Raym. 364. 12. Mod. 211. Salk. 127. Ld Raym. 574. Salk. 129. Doug. 284. 1. Atk. 611. Comb. 401. Cowp. 573, 574. Doug. 1666. Molloy, b. 2. c. 10. f. 20. Marius, 2. Ed. 17. Ann. 75. 1. T. Rep. 1211. 648. Doug. 286. Cowp. 572. 1. T. R. 269. Str 214. 11. Mod. 190. Smith v. De la Fontaine, B. R. T. 25. G. 3 Comb. 452. Mar. 2 Ed. 22. Str. b. 2 c. 10. f 18, 19, 20, 21. 28. Mar. 2. Ed. 16. 17. Beawes, f. 218. 1. Ed, and f. 221. 1. Ld. p. 444. 12 Mod. 410. Doug. 235, 236, 237, 238. 284.

Payee v. Drawer, upon the acceptor's refusing payment.

WHEREAS the said defendant heretofore, to wit, on the twenty-seventh day of January, A. D. 1787, at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date, &c. upon one T. T. No. 13, Smithfield, London, and thereby required him the said T. T. to pay to the said plaintiff, by the name of Mr. H. or order, two months after the date of the said bill, one hundred pounds for value received, and then and there delivered the said bill to the said plaintiff, × which said bill of exchange he the said T. T. afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants in that particular, accepted: and the said plaintiff avers, that he the said plaintiff afterwards, at the end and expiration of

the time appointed for the payment of the said sum of money in the said bill mentioned, to wit, on the thirtieth day of March, A. D. aforesaid, at, &c. aforesaid, shewed and presented the said bill to the said T. T. and then and there required him the said T. T. to pay to him the said plaintiff the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill and his aforesaid acceptance thereof; but the said T. T. did not, when the said bill was so shewn and presented as aforesaid, or at any other time whatsoever, pay to the said plaintiff the said sum of money in the said bill mentioned, or any part thereof, but then and there wholly refused so to do; of which said several premises he the said defendant afterwards, to wit, &c. had notice; by reason of which several promises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill mentioned, when he the said defendant should be thereto afterwards requested; and being so liable, &c. (Promise to pay on request accordingly. Common conclusion.)

Payee v. Drawer, upon the drawee's refusal to accept.

AS in the last precedent to this × mark (i. e. state the delivery). And the said plaintiff avers, that he the said plaintiff afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants, shewed and presented, and caused, &c. the said bill to the said T. T. for his acceptance thereof, and then and there required him the said T. T. to accept the same; but the said T. T. did not nor would then and there accept the said bill, but then and there wholly and absolutely refused so to do; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason of which several promises, and by force of the custom and law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill specified (a), *when he the said defendant should be thereto afterwards requested*; and being so liable, &c. promise accordingly.

(a) If the drawee refuses to accept the bill, the payee (b) *can immediately upon refusal* oblige the drawer to pay the contents of the bill, although, according to the tenor of the bill, the payment is to be at some future time. Milford v. Mayor, Douglass, 55. 3. Burr. 1687. V. Lawes.

(b) Bright v. Purrier, Bull. Ni. Pri. Ed. 1790. p. 269.

On a bill of exchange, Payee v. Acceptor, on a bill drawn payable at one month, and by defendant accepted at two months.

On the acceptance say,

AT London, &c. upon sight thereof, accepted at two months after the date of the said bill, according to the said custom, &c. became liable to pay, &c. according to the tenor of his acceptance, &c. promised, &c. according to the tenor and effect of his said acceptance of the said bill. (A 2d Count, that the defendant accepted generally, &c.)

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Declaration in exchequer of pleas of an *inland* bill of exchange, *Payee v. Acceptor*, the bill dated twelfth day of the *twelfth month*, with an averment, that 12th month is December.

LANCASHIRE, to wit. John Tunstall, a debtor of our sovereign lord the king, comes before the barons of his exchequer on the day of and complains by bill against John Jackson, present here in court the same day, of a plea of trespass on the case, &c. for that whereas, at the several times hereafter mentioned, he the said J. T. the said J. F. and Joseph Tilley, were persons residing, trading, and using commerce within this kingdom, to wit, at Liverpool, in the county aforesaid, and being so resident and trading, the said J. T. on the twelfth day of December, A. D. 1723, at L. aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants, from time immemorial used and approved of within this kingdom, and the said bill, bearing date the day and year aforesaid, directed to the said John by the name of, &c. and thereby required him, twenty days after date of the said bill, to pay to the said J. F. by the name of, &c. or order, the sum of twenty pounds, and his acquittance should be the said J. T.'s discharge for so much from the said J. T. and then and there delivered the said bill to the said *J. F.* (payee and defendant); which said bill of exchange the said J. S. afterwards, and before the payment of the money therein specified, and also before the time appointed by the said bill for the payment thereof, to wit, on the twentieth day of December in the year aforesaid, at L. aforesaid, upon sight thereof accepted, according to the said custom; and by reason thereof, and according to the said custom, the said J. S. became liable to pay to the said J. F. the said twenty pounds, specified in the said bill, according to the tenor and effect of the said bill, and his said acceptance thereof; and being so liable, he the said J. S. in consideration, &c. afterwards, &c. at, &c. undertook, &c. and promised the said J. F. to pay him the said sum of money contained in the said bill (*b*) *according to the tenor and effect of the said bill*, and of his said acceptance thereof: and the said J. F. avers, that the twelfth month mentioned in the said bill was and is understood and known to be the month of December, and no other month. (Another Count on the same bill, laying it on the same date, and payable on the same day, but omit the averment; money had, &c.; and common conclusion.)

(*b*) Acceptance to pay a bill of exchange after the day of payment past, *secundum tenorem billæ*, good, Lord Ray. 574; though the better way is to declare on a general promise, without restraining it by the *tenorem*, &c. Lord Raym. 365. 12. Mod. 211. 410. Salk. 127, 129.

Payee v. Drawer. One Count, that the person on whom drawn accepted, but did not pay; and another, that he refused to accept.

YORKSHIRE, to wit. That whereas, at the several times hereafter mentioned, the said A. and J. and one Edward Press, were persons residing, &c. to wit, at the Castle of York, and being so resident and trading, he the said J. on the fifteenth day of September, A. D. 1749, at, &c. aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, ac-

accord-

cording to the custom of merchants from time immemorial used and approved of within this kingdom, and the said bill bearing date the day and year aforesaid, then and there directed to the said Edward by the name and description of Mr. Edward Press, of Doncaster, shopkeeper, and by the said bill required the said Edward, *at sight* thereof, to pay to the said A. or order, the sum of eight pounds, and to place the same to account as by advice from the said J. and then and there delivered the said bill to the said A. which said bill the said E. afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also before the time appointed by the said bill for the payment of the money therein specified, to wit, on the said fifteenth day of September in the year aforesaid, at the Castle of York aforesaid, in the county aforesaid, upon sight thereof accepted, according to the said custom: and the said A. avers, that he the said A. afterwards, at the expiration of the time appointed by said bill for the payment of the money therein mentioned, to wit, on the eighteenth day of September in the year aforesaid, at, &c. aforesaid, (*a*) *shewed and presented* said bill to the said Edward, and then and there required the said E. to pay to the said A. the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of his said acceptance thereof; but the said E. at the time when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, did not pay to the said A. the said sum of money contained in the said bill, or any part thereof, but then and there wholly refused so to do; of all which said premises the said J. afterwards, to wit, on the nineteenth day of September in the year aforesaid, at, &c. aforesaid, had notice; by reason of which said several premises, and according to the said custom and law of merchants, the said J. became liable to pay to the said A. the said sum of eight pounds specified in the said bill; and being so liable, &c. (Assumpsit to pay on request.)

2d Count on drawee's (1) refusal to accept.

(1) Bull. Ni. Pri. 1793. p. 269. Doug. 55. Mar. 2 Ed. 13. Bunb. 149. Bl. 763. 761. 6. Mod. 138. Pl. Ass. 28. 1. Wils. 185. 4. Bro. Parl. Ca. 607. 2. T. R. 52.

And whereas the said A. J. and E being so resident and trading as aforesaid, the said J. on the fifteenth day of September in the year aforesaid, at, &c. aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the custom, &c. and the said last-mentioned bill, bearing date the day and year last aforesaid, then and there directed to, &c. and by the said bill required, &c. (as in the other count), and then and there delivered the said bill to the said A. which said last bill the said A. afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, in the county aforesaid, shewed and presented to the said E. for his *acceptance* thereof, and then and there required him to accept the same; but the said E. *did not then, or at any other time whatsoever, accept the said bill, but then and there wholly refused to accept* the same, or ever to pay to the said A. the said sum of mo-

(*a*) It should be averred in the declaration, that the bill was shewn or presented to the drawee, so ruled on demurrer for that omission. Vin. Abr. tit Bills of Exchange, O. 5. and 2. Show. 180. Doug. 654.

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ney therein mentioned, or any part thereof; of all which said premises the said J. afterwards, to wit, on the day and year aforesaid, at, &c. had notice; by reason of which said premises last-mentioned, and according to the said custom, and by the law of merchants, the said J. became liable, &c.; and being so liable, &c. (Assumpsit to pay on request; money had and received; and common conclusion.)

Declaration by *Executrix* on [illegible] the bill of exchange was not paid when due; whereupon the testator accepted a bond from the *acceptor* of the bill which [illegible]

LONDON, to wit. For that whereas the said defendant in the lifetime of the said William, and before the making of the promise and undertaking hereafter next mentioned, to wit, on, &c. at, &c. according to the usage and custom of merchants, made his certain bill of exchange in writing, his own proper hand-writing being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to one Sir William Lewis, and thereby required the said Sir William Lewis, at a certain time in the bill mentioned, to pay to the said William, or his order, one hundred pounds, which said bill of exchange the said Sir William afterwards, to wit, on, &c. upon sight thereof, accepted, according to the said custom: and the said plaintiffs aver, that afterwards, and when the said bill became due and payable, according to the tenor and effect thereof, to wit, on, &c. the said William shewed and presented, and caused and procured the said bill to be shewn and presented to the said Sir William for his payment thereof, and then and there requested him to pay the same; but that the said Sir William did not then and there, or at any other time whatsoever, pay the said sum of money, or any part thereof, to the said William, but therein wholly failed and made default; whereof the said John afterwards, and in the lifetime of the said William, and before the making of the said promise and undertaking of him the said defendant hereinafter mentioned, to wit, on, &c. had notice; and by reason thereof, and according to the law and custom of merchants, the said John became liable to pay to the said William the said sum of one hundred pounds, when he should be thereto afterwards requested. And being so liable, afterwards, to wit, on, &c. in consideration of the said premises, and also in consideration that the said William had, at the like special instance and request of the said defendant, forborne to call on said defendant for the immediate payment of the said sum of money, in the said bill of exchange mentioned, and had then and there, at the like special instance and request of said defendant, accepted a bond from the said Sir William Lewis, bearing date, &c. conditioned for the payment of the said sum of one hundred pounds by the said Sir William, with interest at five per cent, on, &c. then next, he the said John undertook, &c. the said William, that if any default should happen in the said payment of the said sum of money, according to the condition of the said bond, he the said John would be responsible to the said William for the same: and the said plaintiff avers, that the said Sir William Lewis did not pay

In consideration that testator would forbear and accept a bond.

If default should be made in payment of the bond, would be responsible.

to

to the said William the sum of one hundred pounds and interest, or any part thereof, on, &c. then next, according to the condition of the said bond, or at any other time whatsoever, but therein wholly failed and made default; of all which said premises the said John afterwards, and in the lifetime of the said William, to wit, on, &c. had notice; and by reason thereof, and according to the said promise and undertaking of the said John, in form aforesaid made, the said John became liable to pay to the said William the said sum of money and interest when he should be thereto afterwards requested. And whereas also the said John afterwards, and in the lifetime of the said William, and before the making of the promise and undertaking of the said John hereinafter mentioned, to wit, on, &c. was indebted to the said William in another large sum of money, to wit, in the sum of one hundred pounds, for so much money before that time lent, and by the said William to the said John at his like special instance and request, upon the security of a certain note or bill of exchange, before that time drawn by the said John on the said Sir W. L. payable to the said William, which had been duly accepted by the said Sir W. L. but had not been paid by him: and whereupon afterwards, to wit, on, &c. in consideration of the premises, and also in consideration that the said William had then and there, at the like instance and request of the said John, forborne to call on the said John for the immediate payment of the said last-mentioned sum of money, and had accepted a bond from the said sir W. L. bearing date, &c. conditioned for the payment of the said last-mentioned sum of one hundred pounds, by the said sir W. L. to the said William, with interest at five pounds per cent, on, &c. he the said John undertook, &c. that if any default should happen in the payment of the said last-mentioned sum of money, according to the consideration of the said last-mentioned bond, he the said John would be responsible to the said William for the same: and the said plaintiffs aver, that the said Sir W. L. did not pay the said last-mentioned sum of money, with interest, or any part thereof, to the said William, on, &c. then next, according to the consideration of the said last-mentioned bond, or at any other time whatsoever, &c. &c. (Conclude as in first Count.) And whereas also the said John heretofore, and in the lifetime of the said William, to wit, on, &c. at, &c. made his certain note in writing, commonly called a promissory note, bearing date, &c. and then and there delivered the said note to the said William, by which said note the said John on demand promised to pay to the said William ten pounds; by reason whereof, and by force of the statute in such case made and provided, the said John became liable to pay to the said William the said sum of money, &c.; and being so liable, he the said John undertook, &c. And whereas, &c. (Money had and received; 5th, money lent, &c.; 6th Count, money laid out, &c.; account stated.) Yet the said John not regarding, &c. but con-

2d Count for money lent upon the security of another bill of exchange.

In consideration of forbearance and accepting a bond.

If default of payment, would be responsible.

3d Count as on a promissory note.

4th Count.

Conclusion.

contriving, &c. to deceive, &c. the said John in his life-time, and the said plaintiffs as aforesaid, since his death, in this behalf hath not, although often requested, been responsible to the said William in his life-time, or to the said plaintiff, executrix as aforesaid, since the death of the said William, for the said several sums in the first and second counts of this declaration mentioned, or either of them, or paid the same, or the said several other sums of money hereinbefore mentioned, or any of them, or any part thereof, to the said William in his life-time, or to the said plaintiff, executrix as aforesaid, since the death of the said William, or to either of them, or in anywise satisfied any or either of them for the same, but hath hitherto wholly refused so to do, and still doth refuse to pay the same to the said plaintiff, executrix as aforesaid, to the damage of the said plaintiff, executrix as aforesaid, of one hundred pounds; and therefore she brings her suit. And she brings into court here the letters testamentary of the said William deceased, which testify to the court here, that the said plaintiff is executrix of the last will and testament of the said William deceased, and has the execution thereof, &c.

Profert.

Plea to the above, General issue 2d, *Actio non accrevit infra sex annos*(a). 3d, That testator was indebted to defendant in a larger sum of money than he owed to plaintiff. 4th plea, That the promise, bills of exchange, and bonds, in the first and second Counts, are the same; that Sir W. L. in life-time of testator, paid part of principal and interest then remaining due; and that the bond last made was delivered by the said Sir W. L. and accepted by the said testator, in satisfaction of the former bond of defendant. 5th plea, The like plea, only stating, that the bond last made by Sir W. L. and accepted by testator, in satisfaction of the former bond. 6th plea, Same, only stating, that the bond last made was delivered by the said Sir W. L. and accepted by the testator, as and by way of satisfaction of the former promise and undertaking of said defendant. 7th plea, Same, only stating, that the bond last made was delivered by Sir W. L. and accepted by testator, as and by way of a new security for the principal and interest remaining due on the first bond.

And the said John, by A. B. his attorney, comes and defends the wrong and injury when, &c. *(non assumpsit)* And for further plea in this behalf, he the said John, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs *(actio non)*; because he says, that the said several causes of action in the said declaration mentioned *did not accrue*, nor did any or either of them accrue, to the said plaintiffs, within six years next before the suing forth the original writ of the said plaintiffs, in manner and form as the said plaintiffs have above complained against him; and this, &c.: wherefore, &c. if, &c. (*a*). And for further plea in this behalf, the said John, by like leave of, &c. according, &c. says, that the said plaintiffs *(actio non)*; because he says, that the said W. E. deceased, in his life-time, and at the time of his death, was indebted in, and that there is still due and owing from the said plaintiffs, executrix and executor as aforesaid, unto him the said John, to wit, at, &c. a much larger sum of money than the sum of money due and owing from the said John to the said plaintiffs as such executrix and executor as aforesaid, and whereof they have above complained against him, to wit, the sum of one thousand pounds, of lawful, &c. for divers goods, &c. sold and delivered to the said W. E. and at his special instance and request, and for money by the said John lent, &c. and for other money laid out, &c. and for other money had and received, &c. and for other money due and owing upon an account stated between the said W. E. and the said John; which said sum of money so due and owing to the said John exceeds the damages sustained by the said

plaintiffs as such executor and executrix as aforesaid, by reason of the non-performance of the several promises and undertakings in the said declaration mentioned; and out of which said sum of money the said John is ready and willing, and hereby offers, to *set off* and allow to the said plaintiffs, as such executor and executrix as aforesaid, so much money as the damage sustained by them by reason of the non-performing the several promises and undertakings of the said John in the said declaration mentioned amount to; and this, &c.: wherefore, &c. if, &c. And for further plea in this behalf as to the first and second counts of the said declaration, he the said John, by like leave, &c. says *(actio non)*; because he says, that the said promises and undertakings in the said first count of the said declaration mentioned, and the said promises and undertakings in the said second count of the said declaration mentioned, are one and the same promise and undertaking, and not divers or different promises and undertakings; and that the said bill of exchange and bond in the said first count of the said declaration mentioned, and the said bill of, &c. in the said second count of, &c. were and are one and the same bill of exchange and bond, and not other, &c.; and that after the making of the said promise and undertaking in the said first and second counts in the said declaration mentioned, and in the life-time of the said W. E. *and before the suing forth the original writ of the said plaintiffs*, to wit, on, &c. the said Sir W. L. *paid and satisfied* to the said W. E. a certain other large sum of money, parcel of, &c. and interest, for which the said bond in the said first and second counts of the said declaration mentioned was so given as aforesaid; and that the said Sir W. L. on, &c. at, &c. made, sealed, and as his act delivered unto him the said W. E. *a certain other bond or writing obligatory*, as therein is mentioned, in a certain penal sum of money therein also mentioned, conditioned for the payment to him the said W. E. at a certain day then to come, of a certain large sum of money therein also mentioned, to wit, a sum of money amounting to the principal and interest then remaining due and owing to him the said W. E. on the said bond in the said first and second counts of the said declaration mentioned, with interest; which said bond or writing obligatory lastly made by the said Sir W. L. as aforesaid, he the said Sir W. L. then and there made and delivered to the said W. E. in lieu, *satisfaction, and discharge of the said former bond* of him the said Sir W. L. in the said first and second counts of, &c. and of all principal and interest then remaining due and owing thereupon, and also in full *satisfaction and discharge* of the said promise and undertaking of the said John in the said first and second counts of, &c.; and which said bond or writing obligatory so lastly made by the said Sir W. L. as aforesaid, the said W. E. then and there took, *accepted*, and received of and from the said Sir W. L. in lieu, satisfaction, and discharge of the said former bond of the said Sir W. L. in the said first and second counts of, &c. and of all such principal and interest then due and owing thereon as aforesaid, and also in full, &c. of the said promise and undertaking of the said John in the said first and second counts 4th Plea.

of,

7th Plea. of, &c.; and this, &c.: wherefore, &c. And for further plea in this behalf, &c. (*actio non*); because he says, that the said promise and undertaking in the said first count, &c. and the said promise and undertaking in the said second count, &c. are one and the same promise and undertaking, and not divers, &c. and that the said bill of exchange and bond in the said second count of, &c. are one, &c. &c.; and that after the making of the said promise and undertaking in the said first and second counts mentioned, and in the life-time of the said W. E. to wit, on, &c. at, &c. the said sir W. L. *paid and satisfied* to the said W. E. a certain large sum of money, to wit, &c. *parcel*, &c. and interest, for which the said bond in the said first and second counts, &c. was so given as aforesaid; and that the said sir W. L. afterwards, to wit, on, &c. made, sealed, and as his act delivered unto the said W. E. a certain other bond, &c. dated as therein is mentioned, in a certain penal sum of money therein also mentioned, conditioned for the payment to him the said W. E. at a certain day then to come, of a certain large sum of money therein also mentioned, to wit, a sum of money amounting to the principal and interest *then remaining due and owing* to him the said W. E. on the said bond in the said first and second counts of the said declaration mentioned, with interest; and which said bond or writing obligatory so lastly made by the said sir W. L. he the said sir W. L. then and there made and delivered to the said W. E. in lieu, &c. of the said former bond of the said sir W. L. in the said first and second counts, &c. and of principal and interest then remaining due and owing thereon; and which said bond, or, &c so lastly made as aforesaid by the said sir W. L. the said W. E. then and there took, accepted, and received of and from the said sir W. L. in lieu, &c. of the said former bond of the said sir W L. in the said first and second counts, &c. and of all such remaining principal and interest then remaining due and owing thereon as aforesaid; and this, &c.

8th Plea. wherefore, &c. if, &c. And for further plea, &c. (*actio non*); because he says, that the said promise and undertaking in the said first count, &c and the said promise and undertaking in the said second count, &c. are one, &c. and that the said bill, &c. &c. (as before); and that after the making of the said promise and undertaking in the said first and second counts, &c. and in the lifetime of the said W. E. and before the suing, &c. of the said plaintiffs, to wit, on, &c. the said sir W. L. paid and satisfied to the said W. E. a certain, &c. *part and parcel*, &c. for which said bond in the said first and second, &c. was so given as aforesaid; and that the said sir W. L. afterwards, to wit, on, &c. made and sealed, and as his act delivered to the said W.E. &c. (as before), in full satisfaction and discharge of the said *promise and undertaking* of the said John in the said first and second, &c. as to the residue of the said principal and interest then remaining due, &c. to the said W. E. on the said bond in these counts mentioned; and which said bond, or, &c. so lastly made by the said sir W. L. as aforesaid, the said W. E. then and there took, &c. in full, &c. of the

said

ſaid promiſe and undertaking of the ſaid John in the ſaid firſt and ſecond counts, &c. as to the reſidue of the ſaid principal and intereſt then remaining due and owing on the ſaid bond in thoſe counts mentioned as aforeſaid; and this, &c. wherefore, &c. And for further plea, &c. as to the firſt and ſecond counts, &c. *(actio non)*; becauſe he ſays, that the ſaid promiſe and undertaking in the ſaid count, &c. (as before, till you come to "not other and different"); and that after the making of the ſaid promiſe and undertaking in the firſt and ſecond counts, &c. and in the lifetime of, &c. and before the ſuing, &c to wit, on, &c. the ſaid ſir W. L. paid, &c. a certain, &c. part, &c. for which the ſaid bond in the ſaid firſt and ſecond &c. was ſo given as aforeſaid, and that the ſaid ſir W. L. afterwards, &c. made, &c. &c.; which ſaid bond, or, &c. ſo laſtly made by the ſaid ſir W. L. he the ſaid ſir W. L. then and there made and delivered to the ſaid W. E. as and by way of a *new ſecurity* for the reſidue of the ſaid principal and intereſt then remaining due and owing to the ſaid W. E. on the ſaid bond in the ſaid firſt and ſecond, &c.; and which ſaid bond ſo laſtly made by the ſaid ſir W. L. as aforeſaid, the ſaid W. E. then and there took, accepted, and received of and from the ſaid ſir W. L. by way of a new ſecurity for the ſaid reſidue of the ſaid principal and intereſt then remaining due and owing on the ſaid bond of the ſaid ſir W. L. in the ſaid firſt and ſecond counts, &c.; and this, &c. wherefore, &c. if, &c. S. MARSHALL. 7th plea

I have taken a ſimilar liberty to abridge this Plea, and the Replication, as I have done ſome of the Declarations preceding, but preſerved the ſubſtance.

And as to the ſaid plea of the ſaid John by him above pleaded in bar, and whereof he hath put himſelf upon the country, the ſaid plaintiffs do the like. And as to the ſaid plea of the ſaid John by him ſecondly above pleaded in bar, they the ſaid plaintiffs ſay, *præcludi non*; becauſe they ſay, that the aforeſaid William in his lifetime, after the making of the ſaid ſeveral promiſes and undertakings of the ſaid John in the ſaid declaration mentioned, to wit, on, &c. for the recovery of his damages by him ſuſtained by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings ſued and proſecuted out of the court of chancery of our ſaid lord the now king, and the ſaid court then being at Weſtminſter in the ſaid county of Middleſex, a certain original writ of our ſaid lord the now king, againſt the ſaid John, by the name of J. P. late of, &c. directed to the then ſheriffs of the city of London; by which ſaid writ the king commanded the ſaid then ſheriffs of London aforeſaid, that if the ſaid William ſhould make them ſecure of proſecuting his claim, then they ſhould put by gages and ſafe pledges the aforeſaid John, that he ſhould be before the juſtices of our ſaid lord the now king at Weſtminſter, on the morrow of All Souls then next following, to ſhew wherefore, with force and arms, the cloſe of him the ſaid William, at, &c. he broke, and other wrongs to him did, to the great damage of

Replication to the above plea, that the teſtator ſued out of the court of chancery a writ; but before the return he died, and that plaintiffs, as executors, ſome time afterwards ſued out another writ, and that the cauſe of action did accrue within ſix years. 3d Replication, that neither the teſtator nor the plaintiffs are indebted to the plaintiff. 4th, admitting that A. B. did pay part, but that the teſtator did not accept the laſt bond in diſcharge of the firſt. 5th and 6th nearly the ſame as 4th and 7th, that the teſtator did not accept the laſt bond by way of new ſecurity.

him the said William and against the peace of our lord the now king, and that they should have then the names of those pledges, and that writ; which said writ the said William sued out against the said John, with an intention, that upon an appearance of the said John to the said writ of the said William, he the said William, according to the custom of the said court of the bench here, would thereupon declare against the said John for the cause aforesaid in the declaration of them the said plaintiffs above mentioned; but that he the said William afterwards, and before the return of the said original writ, to wit, on, &c. *died*, *whereby the said original writ* then and there became, and was wholly *abated* and discontinued; and the said plaintiffs, executor and executrix as aforesaid, in a much shorter time than the space of one year after the death of the said William, and as soon as they conveniently could, to wit, on, &c. sued out of the court of chancery of our lord the now king, the same then being at Westminster aforesaid, in the said county of Middlesex, *the said original writ* whereon the said plaintiffs have above declared, returnable to the said court of the lord the king of the bench, on, &c. in the twenty-ninth year of, &c.; to which said original writ of them the said plaintiffs, the aforesaid John, in Michaelmas Term last past, appeared, by J. N. his attorney, in the said court of the lord the king of the bench here; whereupon they the said plaintiffs, in the said Michaelmas Term last past, declared thereupon against the said John in manner and form aforesaid. And the aforesaid plaintiffs in fact say, that the said several causes of action, and each of them, have accrued within six years next before the issuing the said original writ so by the said William in his lifetime sued out and prosecuted as aforesaid, and that the aforesaid William, in the writ and declaration of them the said plaintiffs above named, are one and the same person, and not other or different; and that the aforesaid John, in the aforesaid original writ by the said William sued and prosecuted as aforesaid named, and the said John in the writ and declaration of them the said plaintiffs above named, are one and the same person, and not other or different; and this, &c. wherefore they pray judgment, and their damages, by occasion of the premises, to be adjudged to them, &c. *And* as to the said plea of the said John by him thirdly above pleaded in bar, the said plaintiffs say, that they *præcludi non*; because they say, that the said William in his lifetime, and at the time of his death, was not, nor were, nor are they the said plaintiffs, as executor and executrix as aforesaid, or either of them, indebted to the said John in manner and form as the said John hath in his said third plea above pleaded; and this the said plaintiffs pray may be inquired of by the country, &c. *And* as to the said plea of the said John by him fourthly above pleaded in bar as to the first and second counts of the said declaration, the said plaintiffs say, *præcludi non*; because protesting, that the said fourth plea, and the matters therein contained, are not sufficient in law to bar them from having their aforesaid action thereof maintained against him the said John for

Averment that plaintiffs named in writ and declaration are the same, &c.;

and that defendant named, &c the same, &c.

Replication to 3d plea, Issue tendered on the set off.

Replication 4th plea.

replication:

replication: neverthelefs, in this behalf the faid plaintiffs fay, that true it is that the faid fir W. L. did pay and fatisfy to the faid William in his lifetime fuch fums of money as the faid John hath in his fourth plea above alledged, part and parcel of the faid 100l. and intereft, for which the faid bond in the firft and fecond counts was given, as the faid John hath in his faid fourth plea above alledged; but protefting, that the faid fir W. did not make, feal, and as his act and deed deliver unto the faid William fuch other bond or writing obligatory as the faid John hath in his faid plea alfo alledged; and the faid plaintiffs further fay, that the faid William in his lifetime did not take, accept, or receive the faid laft mentioned bond or writing obligatory from and of the faid fir W. L. in lieu, fatisfaction, and difcharge of the former bond of him the faid fir W. L. in the faid firft and fecond counts of the faid declaration mentioned, and of all principal and intereft then due and owing thereon, and alfo in full fatisfaction and difcharge of the faid promifes and undertakings of the faid John in the faid firft or fecond counts of the faid declaration mentioned, or either of them, in manner and form as the faid John hath in his faid fourth plea above alledged; and this the faid plaintiffs pray, &c. *And* as to the faid plea of the faid John by him fifthly above pleaded in bar as to the firft and fecond counts, &c. the faid plaintiffs fay, *præcludi non*; becaufe protefting, that the faid fifth plea, and the matters therein contained, are not fufficient in law to bar them the faid plaintiffs from having and maintaining their aforefaid action thereof againft the faid John for replication: neverthelefs, in this behalf the faid plaintiffs fay, that true it is that the faid fir W. L. did pay and fatisfy to the faid William in his lifetime fuch fum of money as the faid John hath in his faid fifth plea above alledged, part, &c. and intereft, for which the faid bond in the faid firft and fecond counts of the faid declaration mentioned was given, as the faid John hath in his faid fifth plea above alledged; but protefting, that the faid fir W. L. did not make, feal, and as his act and deed deliver unto the faid W. E. fuch other bond or writing obligatory as the faid John hath in his faid fifth plea above alledged: and the faid plaintiffs further fay, that the faid W. E. in his lifetime did not take, accept, and receive the faid laft mentioned bond or writing obligatory of and from the faid fir W. L. in lieu, fatisfaction, &c. of the faid former bond of him the faid fir W. L. in the faid firft and fecond counts of the faid declaration mentioned, and of all remaining principal and intereft then due and owing thereon, in manner and form as the faid John hath in his faid fifth plea above alledged; and this the faid plaintiffs alfo pray, &c. *And* as to the faid plea of the faid John by him fixthly above pleaded in bar as to the firft and fecond counts of, &c. fay, &c. *præcludi non*; becaufe protefting, that the faid fixth plea, &c. (as before); neverthelefs, for replication, &c. they fay, that true it is that the faid fir W. L. did pay and fatisfy to the faid W. E. in his lifetime fuch fum of money as the faid John hath in his faid fixth plea above alledged, part and parcel, &c. for which the faid bond in the faid firft and fecond counts, &c. was given, as the faid

Replication 5th plea.

Replication 6th plea.

said John hath in his said sixth plea above alledged; but protesting, that the said sir W. L. did not make, &c. (as before), in full satisfaction and discharge of the said promise and undertaking of the said John in the said first and second counts, &c. as to the said residue of the said principal and interest then remaining due and owing on the said bond in those counts mentioned, in manner and form as the said John hath, &c. alledged; and this they pray, &c. And also as to the said plea of the said John by him lastly above pleaded in bar as to the said first and second counts, &c. the said plaintiffs say, *præclud. non*, because protesting, that the said last plea and the matters therein contained, &c. (as before) for replication, &c. say, that true it is that the said sir W. L. did pay and satisfy to the said W. E. in his lifetime such sum of money as the said John hath above in his last plea above alledged, part, &c. for which the said bond in the said first and second counts, &c. was given, as the said John hath in, &c. alledged; but protesting, that the said sir W. L. did not seal, &c. *by way of new security* for the residue of the said principal and interest then remaining due and owing on the said bond of the said sir W. L. in the said first and second counts, &c. and interest, in manner and form as the said John hath in his said last plea above alledged, and this the said plaintiffs pray may be inquired of by the country, &c.

Replication to 7th plea.

S. LE BLANC.

On a banker's draft at six days payable to bearer by P. against Drawer.

MIDDLESEX, to wit. Sir Jacob Wheate complains against George Robert Fitzgerald, being in the custody, &c. for that whereas the said defendant, on the twenty fifth of June A. D. 1773, at Westminster, in the county aforesaid, according to the usage and custom of merchants from time immemorial used and approved within this kingdom, *made* his certain *bill of exchange* in writing, subscribed with his own hand, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to Drummond, (by the name and style of Messrs. Drummonds,) and by the said bill requested them the said Drummonds, six days after the date of the said bill, to pay to the *bearer* thereof, the sum of seventy three pounds ten shillings, of lawful, &c. for value received, and to place it to the account of the said defendant, and then and there delivered the said bill of exchange to the said plaintiff, which said bill [illegible] the said plaintiff afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, *presented* and shewed the said Drummonds for their acceptance thereof; but the said Drummonds then and there absolutely refused to accept the said bill of exchange, nor have they the said Drummonds, nor either of them, paid the said sum of money contained in the same bill of exchange, or any part thereof, to the said plaintiff, although often requested by the said plaintiff so to do, of all which said premises he the said defendant afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, had notice; by reason whereof, and according to the usage and custom of merchants aforesaid, the said defendant

defendant then and there became liable to the ſaid plaintiff, *being the bearer* of the ſaid bill, the ſaid ſum of money contained in the ſaid bill of exchange, according to the tenor and effect thereof; and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in the ſaid county, undertook, and to the ſaid plaintiff then and there faithfully promiſed to pay him the ſaid ſum of money therein mentioned and contained, according to the form and effect of the ſame bill, whenever he the ſaid defendant ſhould be thereunto afterwards requeſted: nevertheleſs, &c. &c. F. BULLER.

MIDDLESEX, *ſſ.* John Hall, late of, &c. was attached to anſwer Fiſher Adamſon in a plea, &c. that whereas the ſaid John, before and at the time of the making of the promiſe and undertaking of the ſaid John hereafter next mentioned, was owner of certain ſhips or veſſels, to wit, of a certain ſhip or veſſel called the Attempt, and of a certain other ſhip or veſſel called the Audacious, and the ſaid ſhips or veſſels being ſhortly to ſail upon a certain then intended voyage from the port of London, and one J. H. who intended to go and ſerve as a mariner in and on board one of ſuch ſhips or veſſels in its ſaid intended voyage, having provided himſelf and been ſupplied by the ſaid Fiſher with certain neceſſaries for the ſaid voyage, to a certain amount, to wit, to the amount of two pounds of lawful money of Great Britain, he the ſaid John, before the ſailing of either of the ſaid ſhips or veſſels, to wit, on, &c. at, &c. in, &c. drew a certain draft for the payment of the ſaid ſum of money, bearing date the ſame day and year aforeſaid, upon the ſaid John as ſuch owner as aforeſaid; and thereby, for and *on account of the* (1) *wages that might become due* to him the ſaid J. H. as ſuch mariner as aforeſaid, and then and there required the ſaid John, one month after the ſailing, to pay to his the ſaid J. H.'s order the ſum of two pounds ſterling, *in caſe he ſhould go* (that is to ſay, ſail) on the ſaid intended voyage in either the ſaid ſhip or veſſel called the Attempt, or in the ſaid ſhip or veſſel called the Audacious; and having drawn ſuch draft or order for the payment of ſuch money as aforeſaid, and the ſaid debt or ſum of two pounds ſo due and owing to the ſaid Fiſher being ſtill unpaid, he the ſaid J. H. to enable the ſaid Fiſher to obtain payment and ſatisfaction of the ſame, afterwards, and before his ſailing in either of the ſaid ſhips or veſſels in ſuch voyage as aforeſaid, afterwards, to wit, on, &c. *indorſed* and delivered over to the ſaid Fiſher the ſaid draft or order for the payment of the money ſo drawn upon the ſaid J. H. as aforeſaid, and thereby duly authoriſed, ordered, and required the ſaid John to pay the ſaid ſum of two pounds therein mentioned to the ſaid Fiſher, at the time *and on the event* therein ſpecified as aforeſaid; and afterwards, to wit, on, &c. did go and ſail from the ſaid port of London in the ſaid ſhip or veſſel called, &c. on her afore-

Declaration by original againſt the owner of a ſhip; by plaintiff, who had furniſhed one of the ſailors with neceſſaries, for which the ſailor *had given the plaintiff a draft* on the defendant, who promiſed to pay it, but did not.

(1) 1 Wilſ. 262.

aforesaid intended voyage; whereof, and of which said several premises, he the said John afterwards, and before the making of his promise and undertaking hereafter next mentioned, to wit, on, &c. at, &c. had notice; and thereupon afterwards, and after the sailing of the said last-mentioned ship or vessel on her said intended voyage as aforesaid, to wit, on, &c. at, &c. in, &c. in consideration of the several premises aforesaid, and also in consideration that the said Fisher was still unpaid his debt or demand of two pounds so due and owing to him from the said J. H. as aforesaid, he the said John undertook, and then and there faithfully promised the said Fisher to pay him the said Fisher the said sum of two pounds in the said draft mentioned, upon the said twenty-ninth day of the said month of December A. D. 1786: and although upon the said twenty-ninth day of, &c. the said debt or sum of two pounds so due and owing from the said J. H. as aforesaid remained and was still due and owing unto the said Fisher; and although the said John had then and there, to wit, at, &c. notice thereof, and was then and there required to pay the said sum of two pounds in the said draft mentioned unto him the said Fisher, according to the tenor and effect of his aforesaid promise and undertaking in that behalf; yet the said John, not regarding his said promise and undertaking, but contriving and fraudulently intending to deceive the said Fisher in this behalf, did not, on, &c. pay, nor hath he as yet paid, the said sum of two pounds in the said draft mentioned, or any part thereof, to the said Fisher, but he so to do then and there, and always from thence hitherto, hath neglected and refused so to do; nor hath he the said J. H. as yet paid to the said Fisher the said debt or sum of two pounds so due and owing to him from the said J. H. as aforesaid, or any part thereof, but the same is still wholly due and unpaid to him the said Fisher, to wit, at, &c. And whereas, &c. (Goods sold to the plaintiff John Hall, and delivered to J. H. 3d Count, Money laid out, &c. &c.; account stated, and common conclusion.)

2d Count.

V. LAWES.

BY FIRST INDORSEE.

Indorsee against *Acceptor* of an inland bill of exchange.

FOR that whereas, at the several times hereafter mentioned, the said plaintiff and defendant, and one D. C. were persons residing, trading, and using commerce within this kingdom, to wit, at, &c. and being so resident, &c. he the said D. C. heretofore, to wit, on, &c. at, &c. according to the custom of merchants, from time immemorial used and approved of within this kingdom, made and drew *his* certain bill of exchange in writing, his own proper hand being thereto subscribed, and the said bill, bearing date the day and year aforesaid, then and there directed to said (defendant), by the name of, &c. and by the said bill then and there required the said (defendant) *two months* after date thereof, to pay to his the said D. C.'s own order thirty pounds value received of him the

the ſaid D. C. which ſaid bill of exchange he the ſaid (defendant) afterwards, to wit, on, &c. at, &c. *accepted*, according to the ſaid cuſtom of merchants; and the ſaid D. C. to whoſe order the payment of the ſaid ſum of money, in the ſaid bill ſpecified, was to be made as aforeſaid, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill ſpecified, or any part thereof, to wit, on, &c. at, &c. *indorſed* the ſaid bill, his own proper hand being thereto ſubſcribed, according to the ſaid cuſtom, and by that indorſement appointed the ſaid ſum of money, in the ſaid bill ſpecified, to be paid to the ſaid plaintiff, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid (plaintiff); of which ſaid indorſement ſo made on the ſaid bill as aforeſaid, he the ſaid (defendant) afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and according to the ſaid cuſtom and law of merchants, the ſaid (defendant) became liable to pay to the ſaid (plaintiff) the ſaid ſum of money in the ſaid bill ſpecified, according to the tenor and effect of the ſaid bill and his aforeſaid acceptance thereof, and the ſaid indorſement ſo made thereon as aforeſaid; and being ſo liable, he the ſaid (defendant), in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to the ſaid (plaintiff), to pay him the ſaid ſum of money in the ſaid bill ſpecified, according to the tenor and effect of the ſaid bill, and of the ſaid acceptance and indorſement aforeſaid. (2d Count, for money had and received. 3d ditto, Money lent and advanced. 4th, Laid out, expended, &c.: account ſtated, and common concluſion.)

Acceptance.

Indorſement.

The defendant alledged the acceptance to be a forgery. I have looked into the books upon the defence intended to be ſet up to this action, and I am induced to think, that if the forgery can be clearly made out, (but not otherwiſe,) it will be an anſwer to the action. I have not found any caſe exactly in point, but I think that there is one that nearly goes the length of the defence. It is that of Cooper and Le Blanc, 2 Stra 1051. when, though the chief juſtice refuſed to let the defendant (the indorſer of a note, who, upon its being brought to him, acknowledged the indorſement, and ſaid the bill ſhould be paid) ſhew a forgery of indorſement by ſimilitude of hands, yet the caſe goes on to ſay, that the judge was inclined to allow proof of actual forgery, if the defendant could have ſhewn it; but not doing ſo, plaintiff obtained a verdict: from whence it ſeems to follow, that proof of actual forgery will be an anſwer to the action; and for my own part I am of that opinion, yet at the ſame time it is ſo difficult to make it out, (without the evidence of defendant, which cannot of courſe be had,) that it may be worth the plaintiff's while to riſk the ac

FOR that whereas before and at the time of the making of the bill of exchange hereafter mentioned, and from thence, until, and at and after the making of the ſaid promiſe and undertaking of the ſaid defendant hereafter next mentioned, the ſaid plaintiff and the defendant, and certain other perſons uſing the ſtile and firm of, &c. were perſons reſiding, trading, and uſing commerce within this kingdom, to wit, at, &c. And whereas the perſons uſing the ſtile and firm of, &c. were, at the reſpective times hereafter

Indorſee v. *Acceptor* on an *inland* bill of exchange, payable to the order of 3d perſons who *partners*.

mentioned, partners and joint dealers together in the way of their trade and commerce, as were the said other persons using the name, stile and firm of, &c. in the way of their trade and commerce, to wit, at, &c. And the said plaintiff, defendant, and the said persons using the stile and firm of, &c. and the said other persons using the stile and firm of, &c. as aforesaid, being so resident, trading, and using commerce as aforesaid; and the said persons using, &c. as well as those using, &c. as aforesaid, being such partners and joint dealers together as aforesaid, the said persons so using, &c. as aforesaid, on, &c. at, &c. according to the custom of merchants from time immemorial, &c. made their certain bill of exchange in writing, their said stile of, &c. being thereto subscribed, to wit, in the hand-writing of one of them, and the said bill bearing date on, &c. then and there directed to said defendant by the name of, &c. and thereby required him said defendant, two months after the date thereof, to pay to the order of the said persons using the said stile and firm of, &c. six pounds two shillings for value received, as advised by them the said persons using, &c.; which said bill of exchange the said defendant afterwards, and before the payment of the money specified, or of any part thereof, and also before the time appointed for the said bill for the payment thereof, to wit, on, &c. at, &c. at sight thereof accepted, according to the said custom of merchants: and the said persons using, &c. to whose order the payment of the said sum of money, contained in the said bill, was to be made, afterwards, and before the payment of the said sum of money contained in the said bill, or any part thereof, and also before the time appointed by the said bill for the payment thereof, to wit, on, &c. at, &c. indorsed the said bill, their aforesaid stile, &c. being thereon written, to wit, in the hand writing of one of them, and by the indorsement appointed the contents of the said bill to be paid to said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said indorsement so made on the said bill as aforesaid, the said defendant afterwards, to wit, on, &c. at, &c. had notice; by reason whereof, and of the aforesaid custom and the law of merchants, he the said defendant became liable to pay to said plaintiff said sum of money in said bill specified, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsement so made thereon as aforesaid; and being so liable, he said defendant, in consideration, &c. un[illegible]cording to the tenor and effect of his said bill and his said acceptance thereof, and of the said indorsement so made thereon as aforesaid.

Acceptance.

Indorsement.

First Indorsee v. Acceptor.

FOR that whereas one W. S. heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date, &c. aforesaid, upon the said defendant, by the name of, &c. and thereby required the said defendant to pay to one J. C. by the name of, &c.

or order, two months after the date of the ſaid bill, one hundred pounds for value received, and then and there delivered the ſaid bill to the ſaid J. C. which ſaid bill of exchange he the ſaid defendant afterwards, to wit, on, &c. aforeſaid, at, &c. according to the cuſtom of merchants in that particular, accepted: and the ſaid J. C. to whom or to whoſe order the payment of the ſaid ſum of money in the ſaid bill mentioned was to be made as aforeſaid, afterwards and before the payment of the ſaid ſum of money in the ſaid bill ſpecified, or any part thereof, to wit, on, &c. at, &c. *indorſed* the ſaid bill according to the cuſtom of merchants in that particular, and by that indorſement appointed the ſaid ſum of money in the ſaid bill ſpecified to be paid to the ſaid (plaintiff), and then and there delivered the ſaid bill ſo indorſed to the ſaid (plaintiff); of which ſaid indorſement ſo made on the ſaid bill as aforeſaid, he the ſaid (defendant) afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and according to the uſage and cuſtom of merchants, the ſaid (defendant) became liable to pay to the ſaid (plaintiff) the ſaid ſum of money in, &c. ſpecified according to the tenor and effect of the ſaid bill, and of the aforeſaid acceptance and indorſement thereof; and being ſo liable, &c. (Promiſe to pay, according to the tenor, &c. of ſaid bill, and of the aforeſaid acceptance and indorſement thereof.)

Indorſee v. Drawer.

GO on as in the laſt declaration, till you have ſtated the indorſing; then ſay, Of which ſaid indorſement ſo made on the ſaid bill as aforeſaid, the ſaid (defendant) afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, had notice: and the ſaid J. further ſaith, that the ſaid bill afterwards, and after the time appointed by the ſaid bill for payment of the money therein mentioned, to wit, on 24th January 1765, to wit, at, &c. aforeſaid, was ſhewn and *preſented* to the ſaid (defendant), &c. (Vide Fourth Indorſee *v.* Second Indorſer.)

Indorſee v. Acceptor on an *inland* bill payable to the order of three perſons who are *partners.*

MIDDLESEX, *ſſ.* For that whereas before and at the time of the making of the bill of exchange hereafter mentioned, and from thence, until, and at, and after the making of the promiſe and undertaking of the ſaid defendant herein after next mentioned, the ſaid John Alderſon and Thomas Clarke, and certain other perſons uſing the ſtile and firm of Taylor Lloyd and Co. and certain other perſons uſing the ſtile and firm of Nelſon and Handaſyd, were perſons reſiding, trading, and uſing commerce within this kingdom, to wit, at Weſtminſter, in the ſaid county of Middleſex: And whereas the ſaid perſons uſing the firm and ſtile of Taylor Lloyd and Co. were, at the reſpective times hereafter mentioned, partners and joint dealers together in the way of their trade and commerce, as were the ſaid other perſons uſing the ſtile and firm of Nelſon and Handaſyd, in the way of their trade and commerce, to wit, at Weſtminſter aforeſaid; and the ſaid John

Alderſon,

Alderſon, Thomas Clarke, and the ſaid perſons uſing the ſtile and firm of Taylor Lloyd and Co. and the ſaid other perſons uſing the ſtile and firm of Nelſon and Handaſyd, being ſo reſident, trading, and uſing commerce as aforeſaid; and the ſaid perſons uſing the ſtile and firm of Taylor Lloyd and Co. as well as thoſe uſing the ſtile and firm of Nelſon and Handaſyd, being ſuch partners and joint dealers together as aforeſaid; the ſaid perſons ſo uſing the ſtile and firm of Nelſon and Handaſyd, on the ninth day of September in the year of Our Lord 1780, to wit, at Weſtminſter aforeſaid, according to the cuſtom of merchants from time immemorial uſed and approved of within this kingdom, made their certain bill of exchange in writing, their ſaid ſtile and firm of Nelſon and Handaſyd being thereto ſubſcribed, to wit, in the hand-writing of one of them, and the ſaid bill bearing date the day and year aforeſaid, then and there directed to the ſaid Thomas Clarke, by the name of Mr. Thomas Clarke ironmonger, Oxford-ſtreet, 462, London, and thereby required him the ſaid Thomas Clarke, two months after date, to pay to the order of the ſaid perſons uſing the ſtile and firm of Taylor Lloyd and Co. ſix pounds two ſhillings, for value received, as adviſed by them the ſaid perſons uſing the ſtyle and firm of Nelſon and Handaſyd; which ſaid bill of exchange he the ſaid Thomas Clarke afterwards, and before the payment of the money therein ſpecified, or of any part thereof, and alſo before the time appointed by the ſaid bill for payment thereof, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, accepted, according to the ſaid cuſtom of merchants; and the ſaid perſons uſing the ſtyle and firm of Taylor Lloyd and Co. to whoſe order the payment of the money contained in the ſaid bill was to be made, afterwards, and before the payment of the ſaid ſum of money contained in the ſaid bill, or of any part thereof, and alſo before the time appointed by the ſaid bill for payment thereof, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, indorſed the ſaid bill, their aforeſaid ſtyle and firm of Taylor Lloyd and Co. being thereon written, (to wit, in the hand-writing of one of them) and by the ſaid indorſement appointed the contents of the ſaid bill to be paid to the ſaid John Alderſon, and then and there delivered the ſaid bill ſo indorſed to the ſaid John Alderſon; of which ſaid indorſement ſo made on the bill as aforeſaid, the ſaid Thomas Clarke afterwards, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, had notice: by reaſon whereof, and of the aforeſaid cuſtom and the law of merchants, he the ſaid Thomas Clarke became liable to pay to the ſaid J. Alderſon the ſaid ſum of money in the ſaid bill ſpecified, according to the tenor and effect of the ſaid bill, and of his ſaid acceptance thereof, and of the ſaid indorſement ſo made thereon as aforeſaid; and being ſo liable, he the ſaid T. Clarke, in conſideration, &c. promiſed to pay, &c. according to the tenor and effect of the ſaid bill, and of his acceptance thereof, and of the ſaid indorſement ſo made thereon as aforeſaid. (Add a Count for money had and received, and common concluſion.)

LONDON,

LONDON, ss. Defendants were attached to answer plaintiffs in a plea of trespass on the case, &c. and whereupon the said plaintiffs, by A. B. their attorney, complain, for that whereas the said defendants, on 30th April 1788, at, &c. according to the usage and custom of merchants, made their bill of exchange, the proper hand-writing of each of them being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to certain persons carrying on trade and commerce under the names, style, and firm of Messrs. Shaw Stevens and Co. by the names and descriptions of, &c. and thereby required the said Shaw Stevens and Co. two months after date, to pay to the order of Mr. John Jones five hundred and eighty pounds value received, and afterwards, to wit, on the same day and year aforesaid, to wit, at, &c. caused the said bill of exchange to be indorsed with the name of John Jones, in the usual and customary manner and form of indorsing and negociating bills of exchange, to the intent and for the purpose of making the said bill of exchange negociable like other bills of exchange, according to the said usage and custom of merchants: and the said plaintiffs in fact say, that the said defendants afterwards, to wit, on, &c. at, &c. delivered the said bill of exchange, so indorsed as aforesaid, to certain persons carrying on trade and commerce under the name, style, and firm of Henry Mather and Co to the intent and for the purpose of being negociated by the said Henry Mather and Co. like other bills of exchange, according to the usage and custom of merchants; and the said Henry Mather and Co. afterwards, to wit, on, &c. at, &c. according to the said usage and custom of merchants, indorsed the said bill of exchange, the proper hand-writing of one of them for himself and the other of them in their said joint and copartnership name, style, and firm of Henry Mather and Co. being thereunto subscribed, and by that indorsement appointed the contents of the said bill of exchange to be paid to the said plaintiffs; and the said plaintiffs afterwards, to wit, on, &c. at, &c. according to the said usage and custom of merchants, caused the said bill of exchange, so indorsed as aforesaid, to be shewn and presented to the said Shaw Stevens and Co. for their acceptance thereof; and the said Shaw Stevens and Co. were then and there requested to accept the said bill of exchange, but the said Shaw Stevens and Co. did not then, or at any other time, accept the said bill of exchange, but then and there wholly refused and neglected so to do, to wit, at, &c.: and the said plaintiffs aver, that at the time of the making of the said bill of exchange there was not, nor is there any such person as John Jones in the said bill of exchange and indorsement thereon mentioned, but that the said name was, and is, merely fictitious, to wit, at, &c.; of all which premises the said defendants afterwards, to wit, on, &c. at, &c. had due notice; by reason of which said several premises, according to the said usage and custom of merchants, they the said Roger and Booth then and there became and were liable to pay to the said plaintiffs the said sum of money

Declaration. *Indorsee* against *Drawers*, on an *inland* bill of exchange, payable to a fictitious payee (1)

1st Count states the fact, and that defendants, (drawers,) after making the bill payable to a fictitious person, indorsed it in such name, and negotiated it.

(1) 3. T R. 174. Tatlock v. Harris, 3 T.R. 182. Vere and Lewis, Minet and Gibson, 3. T.R. 481. 3 T. R. 183.

Averment that there was no any such person as John Jones.

money in the ſaid bill of exchange contained; and being ſo liable, &c. (aſſumpſerunt accordingly, &c.) And whereas alſo the ſaid defendants afterwards, to wit, on, &c. at, &c. according to the uſage and cuſtom of merchants, made and drew their certain other bill of exchange, the proper hand-writing of each of them being thereunto ſubſcribed, bearing date the ſame day and year laſt aforeſaid, and then and there directed the ſaid laſt-mentioned bill of exchange to the ſaid perſons ſo as aforeſaid carrying on trade and commerce under the names, ſtyle, and firm of Shaw Stevens and Co. by the names and deſcription of Shaw Stevens and Co. London, and thereby required the ſaid perſons ſo uſing the names, firm, and ſtyle of Shaw Stevens and Co. two months after date, to pay to Mr. John Jones, or bearer, five hundred and eighty pounds value received: and the ſaid plaintiffs aver, that they afterwards, to wit, on, &c. at, &c. became and were, and ſtill continue to be, the bearers and proprietors of the ſaid laſt-mentioned bill of exchange; and that they ſo being bearers and proprietors of the ſaid laſt-mentioned bill of exchange, afterwards, to wit, on, &c. at, &c. according to the uſage and cuſtom of merchants, ſhewed and preſented the ſaid laſt-mentioned bill of exchange to the ſaid perſons ſo uſing the names, ſtyle, and firm of Shaw Stevens and Co. for their acceptance thereof, and then and there requeſted the ſaid perſons ſo uſing the names, ſtyle, and firm of Shaw Stevens and Co. to accept the ſaid laſt-mentioned bill of exchange, but they did not then, or at any other time, accept the ſaid laſt-mentioned bill of exchange, but then and there wholly neglected and refuſed ſo to do, to wit, at, &c.; of all which ſaid premiſes the ſaid defendants afterwards, to wit, on, &c. there had notice; by reaſon, &c. defendants became liable, &c.; and being ſo liable, (aſſumpſerunt, &c. accordingly. 3d Count as on a common bill,) payable to John Jones or order, and indorſed by him to Mather and Co. and by them to plaintiffs, againſt the drawers for non-acceptance; common Counts, and breach.) ALLAN CHAMBRE.

2d Count ſtates it to be a bill payable to ſuch fictitious perſon, or *bearer*, and that plaintiffs bring this action as *bearers* (2)

(2) Vere and Lewis, Minet and Gibſon, ante.

3d Count conſiders it as a negotiable bill of exchange duly indorſed to plaintiffs.

Indorſee againſt *Acceptor* of a bill of exchange accepted, to be paid at a *particular place*, but refuſed payment when it became due.

MIDDLESEX, to wit. For that whereas, at the ſeveral times hereafter mentioned, the ſaid plaintiffs and the ſaid defendant, and one R. B. eſquire, were perſons reſiding, trading, and uſing commerce within this kingdom of England, to wit, at Weſtminſter aforeſaid, in the county aforeſaid; and being ſo reſiding, trading, and uſing commerce as aforeſaid, the ſaid R. B. on, &c. at, &c. made his certain bill of exchange in writing, ſubſcribed with his own proper hand, according to the cuſtom of merchants from time immemorial uſed and approved of, bearing date the ſame day and year aforeſaid, and then and there directed the ſaid bill to the ſaid defendant, by the name and deſcription of, &c. and by the ſaid bill requeſted the ſaid defendant, ſeventy days after date, to pay to his the ſaid R. B.'s order, three hundred pounds value received by him the ſaid R. B.; which ſaid bill afterwards, and before the payment of the ſaid ſum of money mentioned in the ſaid bill of exchange, or any part thereof, and alſo before the time appointed by the ſaid R. B. for the payment thereof, to wit, on, &c.

at,

at, &c. was ſhewn and *preſented*, according to the uſage and cuſtom of merchants, to the ſaid defendant for his acceptance thereof; and thereupon the ſaid defendant, according to the ſaid uſage and cuſtom of merchants, upon ſight thereof accepted *the ſaid bill, to be paid when the ſame became due and payable, according to the tenor and effect thereof, at the houſe of Meſſrs. R. C. and Co.*; and the ſaid R. B. to whoſe order the payment of the ſaid ſum of money, in the ſaid bill mentioned, was to be made, afterwards, and before the payment of the ſaid ſum of money mentioned in the ſaid bill, or any part thereof, and alſo before the time appointed by the ſaid bill for the payment thereof, to wit, on, &c. at, &c. according to the ſaid uſage and cuſtom of merchants, indorſed the ſaid bill, his own proper hand being thereunto ſubſcribed, and by the ſaid indorſement he the ſaid R. B. appointed the ſaid ſum of money, mentioned in the ſaid bill, to be paid to the ſaid plaintiffs, and then and there delivered the ſaid bill, ſo indorſed as aforeſaid, to the ſaid plaintiffs: "and the ſaid plaintiffs "aver, that afterwards, and when the ſaid ſum of money, mentioned in the ſaid bill, had become due and payable, according "to the tenor and effect thereof, to wit, on, &c. at, &c. they, "the ſaid plaintiffs, according to the uſage and cuſtom of "merchants, preſented and ſhewed the ſaid bill of exchange "at the ſaid houſe at which the ſame was, according to the "ſaid acceptance thereof, to be paid, and then and there re-"queſted payment thereof, according to the tenor and effect "of the ſaid bill, and of the ſaid acceptance thereof, and of "the ſaid indorſement ſo made thereon as aforeſaid; but the "ſaid defendant did not, nor did any other perſon or perſons "whatſoever, at the ſaid time when the ſaid bill was ſo ſhewn "and preſented for payment as aforeſaid, or at any other time "whatſoever, pay the ſaid ſum of money mentioned in the ſaid "bill, or any part thereof, but payment of the ſaid bill of ex-"change, at the ſaid time when the ſame was ſo ſhewn and pre-"ſented as aforeſaid, was refuſed at the ſaid houſe;" of all which ſaid premiſes the ſaid defendant afterwards, to wit, on, &c. at, &c. had notice: by reaſon whereof, and according to the ſaid cuſtom and by the law of merchants, he the ſaid defendant became liable to pay to the ſaid plaintiffs the ſaid ſum of money mentioned in the ſaid bill, (a) *when he the ſaid defendant ſhould be thereto afterwards requeſted*; and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to pay them the ſaid ſum of money mentioned in the ſaid bill, (b) *when he the ſaid defendant ſhould be thereto afterwards requeſted.* And whereas, &c. &c. (2d Count ſame as the firſt, only omitting what is in italic and within inverted commas, and inſerting what is in the notes. Add the money Counts, &c. &c.

Preſented for acceptance.

Indorſement.

(a) According to the tenor and effect of the ſaid laſt-mentioned bill, and the indorſement ſo made thereon.

(b) According to the tenor and effect of the ſaid laſt-mentioned bill, and the indorſement ſo made thereon as laſt-aforeſaid, and his acceptance thereof as laſt-aforeſaid.

LONDON,

Declaration by original in B. R. upon a bill of exchange drawn in favour of a (1) fictitious person, and indorsed by the fictitious person, and afterwards negociated in the hands of an innocent indorsee, who brings this action against the drawer.

LONDON, to wit. J. E. late of, &c. cotton manufacturer, was attached to answer B. C. C. T. B. R. S. and W. T. in a plea of trespass on the case, &c.; and whereupon the said plaintiffs, by A. B. their attorney, complain, for that whereas the said plaintiffs and the said defendant, and certain persons using the name, style, and firm of Livesey Hargrave and Co. were persons respectively residing, trading, and using commerce within this kingdom, to wit, at, &c. in, &c; and the said persons so using the name, firm, and style of L. H. and Co. were at those several times partners and joint dealers in their said trade and commerce, under their aforesaid name, style, and firm; and the said plaintiffs and the said defendant, and the said persons so using the name, style, and firm of L. H. and Co. being so partners and joint dealers as aforesaid, he the said defendant on, &c. to wit, at, &c. in, &c. according to the usage and custom of merchants from time immemorial used and approved of, made his certain bill of exchange in writing, with his own proper hand-writing thereto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said bill of exchange so subscribed to the said persons using the name, style, and firm of L. H. and Co. by the name and description of, &c.; by which said bill of exchange the said defendant required the said persons so using the name, style, and firm of L. H. and Co. three months after date, to pay to Mr. C. G. or order one thousand five hundred and fifty one pounds value received, as advised, and then and there delivered the said bill of exchange to the said persons so using the name, style, and firm of L. H. and Co. *and authorized them to negociate and indorse the same in the name of C. G. and thereby to raise money thereon for the use of the said persons* so using the name, style, and firm of L. H. and Co.: and the said plaintiffs aver, that when the said bill of exchange was so made as aforesaid, or at any time afterwards, there was *no such person* as C. G. the supposed payee in the said bill of exchange, but the same was merely *fictitious*, to wit, at, &c.; which said bill of exchange the said persons so using the name, style, and firm of L. H. and Co. afterwards, to wit, on, &c. at, &c. by one (2) *A. G being a person thereunto in that respect lawfully authorized, upon sight thereof accepted*, according to the usage and custom aforesaid; and the said persons so using the name, style, and firm of L. H. and Co. being so authorized as aforesaid, afterwards, and before the payment of the said sum of money therein contained, or any part thereof, and before the time thereby appointed for such payment, to wit, on, &c. at, &c. negociated and indorsed the said bill in and with the name of the said C. G. and by that *indorsement*, in the name of the said C. G. appointed the contents of the said bill of exchange to be paid to the said plaintiffs, and thereby raised the money thereon for the use of the said persons so using the name, style, and firm of L. H. and Co. and then and there delivered the said bill of exchange so indorsed to the said plaintiffs, who thereupon then and there, upon the *credit thereof*, *advanced* to the said persons so using the name, style, and firm

Averment that the payee was a fictitious person.
Bill accepted by the drawee's (2) agent.
Ann. 74.
Str. 1000.
Bavenstock v. Titter, B. R. Sittings in M. T. 24. G. III.
Str. 817.
2. Wils 9.
Burr 1672
1. T. Rep. 185.
Indorsement.
Averment that plaintiffs raised money for defendants, on the credit of such fictitious indorsement.

firm of L. H. and Co. the ſaid ſum of money in the ſaid bill of exchange mentioned, of all which premiſes, he the ſaid defendant afterwards, to wit, on, &c. at, &c. had notice and the ſaid plaintiffs in fact ſay, that afterwards, and when the ſaid bill of exchange became due and payable, to wit, on, &c. at, &c. they the ſaid plaintiffs ſhewed and preſented the ſaid bill of exchange to the ſaid perſons ſo uſing the name, ſtyle, and firm of L. H. and Co. for the payment of the ſaid ſum of money therein contained, and then and there required them to pay the ſame, but the ſaid perſons ſo uſing the name, ſtyle, and firm of L. H and Co did not, nor would then or at any other time whatſoever, pay the ſaid ſum of money in the ſaid bill of exchange contained, or any part thereof, but then and there wholly refuſed ſo to do, of all which premiſes the ſaid defendant afterwards, to wit, on, &c. at, &c. had notice, by reaſon whereof and according to the ſaid cuſtom and by the law of merchants, the ſaid defendant became liable to pay to the ſaid plaintiffs the ſaid ſum of money in the ſaid bill of exchange contained; and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c the ſaid ſum mentioned in the ſaid bill of exchange, when he ſhould be thereto afterwards requeſted And whereas alſo the ſaid plaintiffs, and the ſaid defendant, and the ſaid perſons ſo uſing, &c. being ſo reſiding, &c. commerce as before mentioned, and the ſaid perſons ſo uſing, &c. of L H and Co. being ſo partners and joint dealers as aforeſaid, he the ſaid defendant, on, &c. at, &c. according to, &c. made, &c with his own proper hand thereto ſubſcribed, bearing date the ſame day and year laſt aforeſaid, and then and there directed the ſaid laſt-mentioned bill of exchange to the ſaid perſons ſo uſing the name, ſtyle, and firm of L. H. and Co. by the names and deſcription of, &c. and thereby requeſted them, three months after date, to pay to Mr. C. G *or bearer*, one thouſand five hundred and fifty one pounds value received: and the ſaid plaintiffs aver, that they the ſaid plaintiffs afterwards, to wit, on, &c. at, &c. became and were, and ſtill continue *the bearers and proprietors* of the ſaid bill of exchange, in due form of law, and that they the ſaid plaintiffs, ſo being *bearers and proprietors* of the ſaid bill, afterwards, and when the ſaid bill of exchange became due and payable, to wit, on, &c at, &c. ſhewed and preſented the ſaid laſt-mentioned bill to the ſaid perſons ſo uſing the name, ſtyle, and firm of L. H. and Co. and then and there requeſted them to pay them the ſaid plaintiffs the ſaid ſum of money contained in the ſaid laſt-mentioned bill, according to the tenor and effect thereof, which they the ſaid perſons ſo uſing the name, ſtyle, and firm of L. H. and Co. refuſed to do, whereof the ſaid defendant afterwards, to wit, on, &c. at, &c had notice: by reaſon whereof, and according to the ſaid cuſtom, and by the law of merchants, the ſaid defendant became liable to pay to the ſaid plaintiffs the ſaid ſum of money in the ſaid bill of exchange contained, and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to pay them the ſaid

Preſented payment.

2d. Count omitting the acceptance of the bill, and ſhewing that plaintiffs became legal (3) *bearers* thereof, and that defendant became liable to pay it to them as ſuch, but refuſed, &c.

(3) Vere *v.* Lewis, 3 T. R. 182
Minet *v* Gibſon, 3 T R. 481.

Preſented for payment.

ſaid laſt-mentioned ſum of money, in the ſaid laſt-mentioned bill of exchange contained, when he the ſaid defendant ſhould be thereto afterwards requeſted. (Add the money Counts; account ſtated, &c. &c. Plea, general iſſue, non-aſſumpſit, and iſſue thereon.)

The form of a *bill of exception* for the above Declaration, in caſe it had been neceſſary and adviſeable at the trial, but the jury found a ſpecial verdict.

Be it remembered, that in the Term of St. Hilary, in the twenty-ninth year of the reign of our ſovereign lord George the Third, now king of Great Britain, &c. came B. C. C. T. B. R. S. and W. T. by A. B. their attorney, into the court of our ſaid lord the king of the bench at Weſtminſter, and impleaded J. E. in a certain plea of treſpaſs on the caſe, on which the ſaid B. C. C. &c. declared againſt him; for that whereas the ſaid B C. &c. (Copy to the end of the Declaration, except in the *nequicquam*, which muſt run thus:) But to pay the ſame to the ſaid plaintiffs, or in any manner to ſatisfy them for the ſame, he the ſaid J. E. to that time wholly refuſed, and did then refuſe. (Stop here without laying the damnum, and go on to the plea in theſe words:) And therefore the ſaid J. E. by C. D. his attorney, came and defended the wrong and injury, when, &c. and ſaid, that he did not undertake and promiſe, in manner and form, as the ſaid plaintiffs had above complained againſt him; and of that he put himſelf upon the country, and the ſaid plaintiffs did the like. (Stop here without ſaying the uſual words of the iſſue—therefore the ſheriff is commanded, &c.—but go on as follows:) And afterwards, at the ſittings at niſi prius, holden at the Guildhall of the city of London, in and for the ſaid city, on, &c. in the twenty-ninth year of the reign of the ſaid lord the king, before the right honourable Lloyd lord Kenyon, chief juſtice of our ſaid lord the king, aſſigned to hold pleas before the king himſelf, John Way, gent. being aſſociated to the ſaid chief juſtice, according to the form of the ſtatute in that caſe made and provided, the aforeſaid iſſue between the ſaid parties as aforeſaid came on to be tried by a jury of the ſaid city of London, for that purpoſe duly impanelled, that is to ſay, (here inſert the jurors names,) good and lawful men of the ſaid city of London; at which day came, as well the ſaid plaintiffs as the ſaid J. E. by their reſpective attornies; and the jurors of the jury aforeſaid impanelled to try the ſaid iſſue, being alſo called, alſo came, and were then and there in due manner choſen and ſworn to try the ſame iſſue: and upon the trial of the ſaid iſſue, the counſel for the ſaid plaintiffs did then and there prove and give in evidence, that (here inſert the evidence); and the counſel for the ſaid J. E. on behalf of the ſaid J. E. did then and there object to the ſaid admiſſion of ſuch evidence: and did then and there inſert, before the ſaid chief juſtice, that (here inſert the exceptions): but the ſaid chief juſtice did then and there declare and deliver his opinion to the jury aforeſaid, that the ſaid evidence, on the part of the ſaid plaintiffs, ought to be admitted; and that the ſaid ſeveral matters ſo produced and proved on the part of the ſaid J. E. were not ſufficient to bar the ſaid plaintiffs of their afore-

aforesaid action against him the said J. E. and with that direction left the same to the said jury; and the jury aforesaid did then and there give their verdict for the said plaintiffs, and l. damages; whereupon the said counsel for the said J. E. did then and there, on behalf of the said J. E. except to the aforesaid opinion of the aforesaid chief justice, and insisted on the said several matters and proofs as an absolute bar to the aforesaid action: and inasmuch as the said several matters, so produced and given in evidence on the part of the said J. E. by his counsel in the aforesaid action, objected and insisted on as a bar to the aforesaid action, do not appear by the record of the verdict aforesaid, the counsel for the said J. E. did then and there propose the aforesaid exception to the opinion of the said chief justice, and requested the said chief justice to put his seal to this bill of exceptions, containing the several matters so produced and given in evidence on the part of the said J. E. as aforesaid, according to the form of the statute in that case made and provided; and thereupon the aforesaid chief justice, at the request of the said counsel for the said J. E. did put his seal to this bill of exceptions, pursuant to the aforesaid statute in that case made and provided, on, &c. in the twenty-ninth year of the reign of our sovereign lord the now king.

Westm. 2. 13 Ed. 1.

Præcipe for Declaration by *original*, in B. R. on an *inland* bill of exchange, *Indorsee* v. *Executors of Acceptor*, who *died* before the bill became due. Bill accepted *at a particular place*.

LONDON, to wit. If Edward Parry shall make you secure, &c. then put, by sureties and safe pledges, John Browning, William Browning, and the reverend Henry Cox Mason, late of London, merchants, executors of the last will and testament of John Walter, late of Southwark in the county of Surry, woolstapler, deceased, so that they be before our lord the king on wheresoever, &c. to shew, for that whereas heretofore, in the lifetime of the said John Walter, to wit, on the eighth day of August A. D. 1791, at Branghing, to wit, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, one Samuel Welsh made and drew his certain bill of exchange in writing, according to the custom of merchants from time immemorial used and approved of, bearing date the day and year aforesaid, upon the said John W. by the name and description of Mr. John Walter, woolstapler, Borough, London; and by the said bill requested the said John W. two months after date, to pay *to his the said Samuel Welsh's order* eighty-nine pounds eight shillings, value received of him the said S. W.; which said bill afterwards, and before the payment of the said sum of money therein mentioned, or any part thereof, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, the said J. W. according to the said usage and custom of merchants, upon sight thereof accepted, to pay the same *at Sir James Sanderson and Company's*; and the said Samuel W. to whose order the payment of the said sum of money in the said bill was to be made as aforesaid, afterwards, and before the pay[illegible] said bill, or [illegible] pa[illegible], [illegible]he

 [illegible]he

fame day and year aforefaid, at L. aforefaid, in the parifh and ward aforefaid, according to the ufage and cuftom of merchants, *indorfed* the faid bill, and by the faid indorfement appointed the faid fum of money mentioned in the faid bill to be paid to the faid E. P. and then and there *delivered* the faid bill, fo indorfed, to the faid E. P.; of which faid indorfement fo made on the faid bill, he the faid J. W. afterwards, in his lifetime, to wit, on the day and year aforefaid, at L. aforefaid, in the parifh and ward aforefaid, had *notice*; by reafon whereof, and according to the faid cuftom, and by the law of merchants, he the faid J. W. in his lifetime became liable to pay to the faid E. P. the faid fum of money mentioned in the faid bill, according to the tenor and effect of the faid bill, and of the faid indorfement fo made thereon as aforefaid; and being fo liable, he the faid J. W, in *confideration* thereof, afterwards, to wit, on the fame day and year aforefaid, at L. aforefaid, in the parifh and ward aforefaid, undertook, and then and there faithfully promifed the faid E. P. to pay him the faid fum of money mentioned in the faid bill, according to the tenor and effect of the faid bill, and his faid acceptance thereof, and the faid indorfement fo made thereon as aforefaid. (2d Count, for money had and received; 3d, Account ftated) Yet the faid (defendants), not regarding the faid feveral promifes and undertakings fo made as aforefaid, but contriving and fraudulently intending craftily and fubtilly to deceive and defraud the faid (plaintiff) in this behalf, have not, nor hath any or either of them as yet paid the faid feveral fums of money in thofe promifes and undertakings mentioned, or any or either of them, or any part thereof, to the faid (plaintiff), (although the faid John Walter, the acceptor, after the making and accepting of the faid bill, and before the fame became due and payable, according to the tenor and effect thereof, *departed this life* without paying the fame; and although to pay the fame, and the faid feveral fums of money in the faid feveral other promifes and undertakings mentioned, the faid defendants were requefted by the faid plaintiff, after the time appointed by the faid bill for payment of the money therein contained, and after the making of the faid feveral other promifes and undertakings, to wit, on the day and year laft aforefaid, and often afterwards (*a*), as well at the faid fir James Sanderfon's, (or where the faid bill was fo accepted to be paid as aforefaid,) to wit, at L. aforefaid, in the parifh and ward aforefaid, but they the faid defendants fo to do have refpectively hitherto wholly refufed, and ftill do refufe, to the damage of the faid plaintiff of one hundred pounds, as it is faid.

First indorfement.

Conclufion againft executors acceptors of a bill of exchange.

T. BARROW.

(*a*) An acceptance to pay at his banker's, does not bind the holder to *prefent* there. Smith *v.* De la Fontaine. B. R. T. 25 Geo. 3. Bifhop *v.* Chitty, Str. 1195.

SECOND

SECOND INDORSEE.

Second Indorsee v. Acceptor.

GO on as in the former precedents. And the said R. M. to whom or to whose order the payment of the said sum of money in the said bill specified was by virtue of the said *indorsement* thereof to be made, afterwards and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on, &c. at, &c. aforesaid, indorsed the said bill according to the custom of merchants in that particular, and by that indorsement appointed the said sum of money in the said bill specified to be paid to A. M. and then and there delivered the said bill so indorsed to the said A. M. and the said A. M. to whom or to whose order the payment of the said sum of money in the said bill specified was by virtue of the said last-mentioned indorsement to be made, afterwards and before the payment of the said last-mentioned sum of money in the said bill specified, or of any part thereof, to wit, on, &c. at, &c. aforesaid, *indorsed* the said bill according to the custom of merchants in that particular, and by that indorsement appointed the said sum of money in the said bill specified to be paid to the said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said several indorsements so made on the said bill as aforesaid, he the said defendant afterwards, to wit, on, &c. at, &c. had notice: by means whereof, and according to the usage and custom of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of the aforesaid acceptance, and of the several indorsements thereof; and being so liable, &c. &c.

First Indorsement.

Second Indorsement.

Declaration on a bill of exchange, *Second Indorsee* against *Payee*, after acceptance, payable at a particular place, but in default of payee, by the acceptor.

MIDDLESEX, *ss.* Richard Edwards complains of John Hale, being in the custody of the marshal of the Marshalsea of our lord the now king before the king himself, on a plea of trespass on the case, &c. for that whereas one Thomas Cotton heretofore, to wit, on the twenty-second day of November in the year of Our Lord 1785, at Yarmouth, to wit, at Westminster in the said county of Middlesex, according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid, upon certain persons using the style or firm of Henry Hughes and Co. by the names, style, firm, and description of Messrs. Henry Hughes and Co. No. 52, Lime-street, London, and by the said bill then and there required the said persons so using the style or firm of Henry Hughes and Co. two months after the date of the said bill, to pay to the said John, by the name of Mr. John Hale, or order, one hundred and thirty-eight pounds four shillings and nine pence value in account, as per advice, and then and there delivered the said bill to the said John; *which* said bill the said persons so using the said style

ſtyle or firm of Henry Hughes and Co. afterwards, and before the payment of the ſaid ſum of money therein mentioned, or of any part thereof, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, accepted, according to the aforeſaid cuſtom, by and in the name of Henry Hughes, payable (1) *at the Bank* (that is to ſay, the bank of England); and the ſaid John, to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill mentioned was to be made, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill ſpecified, or of any part thereof, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, *indorſed* the ſaid bill, according to the aforeſaid cuſtom, and by that indorſement appointed the ſaid ſum of money in the ſaid bill mentioned to be paid to certain other perſons uſing the ſtyle or firm of John Moſman and Co. and then and there delivered the ſaid bill, ſo indorſed, *to* the ſaid perſons ſo uſing the ſaid ſtyle or firm of John Moſman and Co.; and the ſaid perſons ſo uſing the ſaid name, ſtyle, or firm of John Moſman and Co. to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill mentioned, was by virtue of the ſaid laſt mentioned indorſement to be made, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill mentioned, or of any part thereof, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, *indorſed* the ſaid bill according to the aforeſaid cuſtom, and by that indorſement appointed the ſaid ſum of money in the ſaid bill mentioned to be paid to the ſaid Richard, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid Richard: and the ſaid Richard further ſays, that at the end and expiration of the time appointed for the payment of the money in the ſaid bill mentioned, to wit, on the twenty-fifth day of January, in the year of Our Lord 1786, the ſaid bill was in due manner ſhewn and (2) *preſented* to the ſaid perſons ſo uſing the ſtyle or firm of Henry Hughes and Co. at the Bank, where the ſame was ſo accepted, to be paid as aforeſaid, for payment of the money therein mentioned; and the ſaid perſons ſo uſing the ſaid ſtyle or firm of Henry Hughes and Co. were then and there required to pay unto him the ſaid Richard the ſaid ſum of money in the ſaid bill ſpecified, according to the tenor and effect of the ſaid bill, and the aforeſaid acceptance and indorſement thereof: but the ſaid Richard avers, that the ſaid perſons ſo uſing the ſaid ſtyle or firm of Henry

Acceptor accepted, payable at the Bank.

Payee indorſed it.

Firſt Indorſees indorſed it to plaintiffs.

Bill preſented at *Bank* for payment to the acceptor at the end of two months, *including* the days of grace.

Averment that acceptor refuſed payment.

(1) 1. T.R. 409. Str. 1195. Smith *v.* De la Fontaine, B. R. 1. 25 Geo. III. 1. T. R. 405. 2. T. R. 713.

(2) 1. Shower, 155. Str. 508. Str. 829. 1175. Bl. 1. 2 Wilſ. 353. Appleton *v.* Sweetapple, B. R. M. 23. Geo. III. 1. Show. 318, 319. Skinn. 410. Salk. 127. 132. Lord Raym. 444. 12. Mod. 244. Burr 674. Doug. 654. 1. T. R. 169. Lord Raym 743. Str. 1087. Marius. 2d Ed 11. Molloy, b. 2. c. 10. ſ. 34. Doug. 497. 1. T. R. 408. Marius, 2d Ed. 15. Malynes, b. 2. c. 5. ſ. 1. Lord Raym. 281. Str. 550. 416. 910. Bl. 1. See J'Anſon *v.* Thomas, B. R. T. 24. Geo. III. Appleton *v.* Sweetapple, B. R. M. 23. Geo III. Str. 416. 1248. Lord Raym. 928. Str. 415, 416. 910. Salk. 132. Str. 508. 1175. Salk. 132. Str. 1175. And ſee Caſes on Preſentment, *poſt.*

Hughes

Hughes and Co. did not, when the ſaid bill was ſo ſhewn and preſented for payment as aforeſaid, or at any other time whatſoever, pay the money therein mentioned, or any part thereof, to him the ſaid Richard, but on the contrary then and there, to wit, at Weſtminſter aforeſaid, in the county aforeſaid, *wholly refuſed* ſo to do, and therein wholly failed and made default, *whereof* the ſaid John Hale afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, (3) *had notice: and thereby*, and by reaſon thereof, and of the ſeveral other premiſes aforeſaid, and by force of the cuſtom and law of merchants, he the ſaid John Hale became liable to pay to the ſaid Richard the ſaid ſum of money in the ſaid bill mentioned, when he ſhould be thereto afterwards requeſted, and being ſo liable, he the ſaid John Hale in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, undertook, and faithfully promiſed the ſaid Richard, to pay him the ſaid ſum of money in the ſaid bill mentioned, when he the ſaid John Hale ſhould be thereto afterwards requeſted. (2d Count, ſame as the firſt, leaving out the intermediate indorſement. 3d, Money had and received. 4th, Account ſtated, &c. to, &c.)

Notice to payee, defendant, by which he became liable to pay, and being ſo, promiſed.

(3) 1 Vent 45. Com 57. Salk. 127. Str. 707. Str 792. Bull Ni. Pri. 2-1. Bl. 747. 1 T. R 167. Doug 654. Salk 131. Comb 384. Lord Raym. 99. 3 Salk. 69.

FOR that whereas certain perſons uſing the name, ſtyle, and firm of Breſter and Co. by their partnerſhip name of Breſter and Company, heretofore, to wit, on the twenty-third day of October, in the year of Our Lord 1788, at London, in the pariſh of St Mary le Bow, in the ward of Cheap, according to the cuſtom of merchants, made and drew their certain bill of exchange in writing, bearing date the day and year aforeſaid, upon certain perſons uſing the name, ſtyle, and firm and deſcription of Meſſrs. B. and H. Ely Place, London, and thereby requeſted the ſaid perſons uſing the name, ſtyle, and firm of B. and H. to pay to one Joſeph Breſter, in the ſaid bill named by the name of Joſeph Breſter, or order, three months after the date thereof, three hundred and ninety pounds fourteen ſhillings value received, and then and there delivered the ſaid bill to the ſaid Joſeph Breſter, and the ſaid defendant, to whom, or to whoſe order, the ſaid ſum of money in the ſaid bill ſpecified was to be paid as aforeſaid, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill ſpecified, or of any part thereof, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, *indorſed* the ſaid bill, according to the ſaid cuſtom; and by that indorſement appointed the contents of the ſaid bill to be paid to one James Morton, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid James Morton, and the ſaid J. M. to whom, or to whoſe order, the ſaid ſum of money in the ſaid bill mentioned was by the ſaid indorſement to be paid as aforeſaid, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill mentioned, or of any part thereof, to wit, on, &c. year aforeſaid, at, &c. aforeſaid, *indorſed* the ſaid bill, according to the ſaid cuſtom; and by that indorſement appointed the contents

Declaration on an inland bill of exchange, *Second Indorſee v. Payee and Firſt Indorſer* after preſentment for acceptance and refuſal action brought immediately, (1) *and before the time appointed for payment.*

(1) Vide Milford v. Mayor, Doug 53 and 3 Burr. 1687.

1ſt Indorſement.

tents

tents of the said bill to be paid to the said plaintiff, and then and there delivered the said bill, so indorsed, to the said plaintiffs: and the said plaintiffs aver, that afterwards, to wit, on, &c. at, &c. aforesaid, the said bill was in due manner, and according to the said custom, shewn and *presented* to the said persons so using the name, style, and firm of Bolt and Heggin, for acceptance thereof, and they were then and there requested to accept the same, but that the said persons so using the name, style, and firm of, &c. did not, nor did either of them, when the said bill was shewn and presented to them as aforesaid, accept the said bill, but on the contrary thereof, then and there wholly *refused* so to do, and therein wholly failed and made default; wherefore the said plaintiff caused the said bill to be protested for non-acceptance thereof, according to the custom of merchants in that particular, to wit, at, &c.; whereof, and of which said several premises, the said defendant afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and of the said several premises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill specified, when he the said defendant should be thereto afterwards requested, and being so liable, &c. T. BARROW.

Averment, bill presented for acceptance, and of refusal to accept.

Præcipe for Declaration by *original* in B. R. by a *Second Indorsee* against *Drawer*, (who is also payee and indorser) of a bill of exchange drawn in Wales upon London, and accepted, but not paid when due.

MIDDLESEX, to wit. If Robert Albion Cox and William Merle shall make you secure, &c. then put, by sureties and safe pledges, Richard Piper late of Swansea in the county of Glamorgan, gentleman, so that he be before our lord the king on the morrow of All Souls, wheresoever, &c. to shew, for that whereas, at the several times hereafter mentioned, the said R. A. Cox and William Merle, and the said Richard Piper, and one Robert Morris, and also one Samuel Leir Phillips, were persons residing, trading, and using commerce within this kingdom of England, to wit, at Westminster in the county of Middlesex aforesaid; and being so residing, trading, and using commerce as aforesaid, he the said Richard Piper heretofore, to wit, on the nineteenth day of April in the year of Our Lord 1789, to wit, at Westminster aforesaid, in the said county of Middlesex, according to the usage and custom of merchants, made his certain bill of exchange in writing, with his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said Robert Morris, by the name and description of Robert Morris esquire, No. 24, Lincoln's Inn, London, and thereby required the said Robert Morris, two months after date, to pay to his the said Richard Piper's *own order*, forty-nine pounds nineteen shillings and sixpence for value received, as advised by the said Richard Piper; which said bill the said Robert Morris afterwards, to wit, on the same day and year aforesaid, to wit, at Westminster aforesaid, in the said county of Middlesex, upon sight thereof, accepted, according to the said custom: and the said Richard Piper, to whose order the payment of the said

sum

sum of money mentioned in the said bill was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county of Middlesex, *indorsed* the said bill, his own proper hand being thereunto subscribed; and by that indorsement the said Richard Piper appointed the contents of the said bill to be paid to the said S. L. Philips, or order, and then and there delivered the said bill, so indorsed, to the said S. L. Philips; and the said S. L. Philips, to whom or to whose order the payment of the said sum of money mentioned in the said bill was to be made as last aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county of Middlesex, *indorsed* the said bill, his own proper hand being thereto subscribed; and by that indorsement the said S. L. Philips appointed the contents of the said bill to be paid to the said R. A. Cox and W. Merle, and then and there delivered the said bill, so indorsed, to the said plaintiffs; of which said several indorsements so made on the said bill the said R. M. afterwards, to wit, on, &c. at, &c. in, &c. had notice: and the said plaintiffs aver, that afterwards, and at the end and expiration of the time appointed by the said bill for the payment of the money therein contained, to wit, on, &c. at, &c. in, &c. the said bill was duly shewn and *presented* to the said R. M. for payment thereof, and he the said R. M. was then and there requested to pay the same, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said several indorsements so made thereon as aforesaid; but that he the said R. M. did not, nor would then and there pay, nor hath he as yet paid, the said sum of money mentioned in the said bill, or any part thereof, to the said plaintiffs, or either of them, but the payment thereof to them, or either of them, hath wholly neglected and refused; neither hath the said S. L. P. paid the same, or any part thereof, to the said plaintiffs, or either of them; of all which premises the said R. P. afterwards, and after the end of the said time limited by the said bill for the payment thereof, to wit, on, &c. at, &c. had due notice: and by reason of the premises, and according to the said custom, and by the law of merchants, he the said R. P. became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange mentioned; and being so liable, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, &c. And whereas, at the several times hereafter in this Count mentioned, the said plaintiffs, as such copartners, and under the style and firm aforesaid, and the said R. M. and also the said S. L. P. being so respectively residing, trading, and using commerce as aforesaid, he the said S. L. P. heretofore, to wit, on, &c. according to, &c. made, &c. &c. (Add the common Counts, and common conclusion.) T. Barrow.

First Indorsement.

S[illegible] r[illegible]

Prese[illegible] paym[illegible]

Secon[illegible] Cou[illegible] as partner[illegible]

Michaelmas Term, 29th Geo. III.

Declaration on an inland bill of exchange, *Second Indorsee* v. *Payee*, drawn by partners, payable to one of the partners or order, where drawee refused to ac-

FOR that whereas certain persons using the name, style, and firm of B. and Co. by their partnership name of B. and Co. heretofore, to wit, on the twenty-third day of October, in the year of Our Lord 1788, at London, in the parish of St. Mary-le-Bow, in the ward of Cheap, according to the custom of merchants, made and drew their certain bill of exchange in writing, bearing date the day and year aforesaid, upon certain persons using the name, style, and firm, of B. and C. by the name, style, firm, and description of Messrs. B. and C. Ely Place, London, and thereby requested the said persons using the name, style, and firm of B. and C. to pay to one A. B. in the said bill named by the name of A. B. or order, three months after the date thereof, three hundred and ninety pounds fourteen shillings value received, and then and there delivered the said bill to the said A. B.; and the said defendant, to whom or to whose order the said sum of money in the said bill specified was to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to one C. D. and then and there delivered the said bill so indorsed to the said C. D.; and the said C. D. to whom or to whose order the said sum of money in the said bill mentioned was, by the said indorsement, to be paid as aforesaid, afterwards, and before the payment of the sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said plaintiffs, and then and there delivered the said bill so indorsed to the said plaintiffs. And the said plaintiffs aver, that afterwards, to wit, on, &c. at, &c. aforesaid, the said bill was in due manner, and according to the said custom, shewn and presented to the said persons so using the name, style, and firm of B. and C. for acceptance thereof, and they were then and there requested to accept the same; but that the said persons so using the name, style, and firm of, &c. did not, nor did either of them, when the said bill was so shewn and presented to them as aforesaid, accept the said bill, but on the contrary thereof then and there wholly refused so to do, and therein wholly failed and made default; wherefore the said plaintiffs caused the said bill to be protested for non-acceptance thereof, according to the custom of merchants in that particular, to wit, at, &c.; whereof, and of which said several premises, the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and of the said several other premises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill specified, when he the said defendant should be thereto afterwards requested; and being so liable, &c. THOS. BARROW.

THIRD

THIRD INDORSEE.

" *YORKSHIRE, ss. If Edward Codd make you secure, &c. then put, &c. George Masterman, late of, &c. merchant, that he be before our lord the king, on the morrow of All Souls, wheresoever, &c. to shew, for that whereas heretofore, to wit, on the eighteenth day of February, in the year of Our Lord* 1781, *that is to say, at York, in the county of York, one J. E."* according to the custom of merchants in that respect used and approved of, made and drew his certain (1) bill of exchange in writing, bearing date the same day and year aforesaid, upon the said defendant, by the name and description of, &c. and by the said (2) bill then and there required him the said defendant, six months after date, to pay to the order of (3) "one" G. B. (4) "*in the said bill mentioned,*" by the name of Mr. G. B. one hundred and twenty pounds value received, as advised, and then and there delivered the said (5) bill to the said G. B. which said (6) bill of exchange the said defendant afterwards, to wit, on the, &c. aforesaid, at, &c. aforesaid, accepted, according to the said custom, "*to pay the same at certain persons using the style or firm of Parker and Co. by the style and description of Messrs. Parker and Co. No.* 91, *Watling Street, London;*" and the said G. B. to whose order the payment of the said sum of money, in the said (7) bill specified, was to be made, afterwards, and before the payment of the said sum of money in the said (8) "*bill mentioned,*" or of any part thereof, to wit, on the said, &c. aforesaid, at, &c. aforesaid, indorsed the said (9) bill according to the aforesaid custom, and by that indorsement appointed the said sum of money, in the said (10) "*bill mentioned,*" to be paid to "*the order of one J. A. and then and there delivered the said bill so indorsed to the said J. A.; and the said J. A. to whose order the payment of the said sum of money, in the said bill mentioned, was by that indorsement appointed to be made, after the making of the said indorsement, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on, &c. at, &c. aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents thereof to be paid to the order of one G. K. and then and there delivered the said bill so indorsed to the said G. K.; and the said G. K. to whose order the payment of the said sum of money, in the said bill mentioned, was by virtue of the said last-mentioned indorsement to be made, after the making of the said last-mentioned indorsement, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on, &c. at, &c. aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents thereof to be paid to*" the said plaintiff, and then and there delivered the said (11) bill so indorsed to the said plaintiff; of which said "*several*" indorsements so made on the said (12) bill as aforesaid, the said defendant afterwards, to wit, on the said, &c. aforesaid, at, &c. aforesaid, had

Declaration by original in B. R. on a bill of exchange, *Third Indorsee v. Acceptor*; but as the bill was actually indorsed *after expiration of the time for* payment by the payee, there is a second Count as indorsee of the said payee.

(1) other
(2) last-mentioned.
(3) the said
(4) herein-before mentioned
(5) last-mentioned
(6) last-mentioned
(7) last-mentioned
(8) last-mentioned bill specified
(9) last-mentioned
(10) last-mentioned bill specified
(11) last-mentioned
(12) last-mentioned

had notice; and thereby, and by reason of the several other premises aforesaid, and by force of the custom and by the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said (13) bill specified, according to the tenor and effect of the said (14) bill, and his aforesaid acceptance thereof, and the said "*several*" indorsements so made thereon as aforesaid; and being so liable, &c. (Second Count, That whereas afterwards, to wit, on, &c. at, &c. aforesaid, the said J. E. same as first, inserting what is in the margin, and omitting what is within inverted commas (*a*) and italic.)

(13) last-mentioned

last mentioned

Indorsement.

N. B. The acceptance was in these words: "Accepted, payable at Messrs. "Parker and Co. 91, Watling street, "London."

N. B. The acceptor refused to pay on account of larger demands against payee and drawer; therefore the bill was returned by the several indorsees to payee, who again indorsed it to plaintiff after it became due.

(*a*) If the student finds any difficulty on account of abridging the precedents, I advise him in all cases to transcribe the Declaration and Plea, &c. and so complete the Counts.

By FOURTH INDORSEE.

Count on an *inland* bill of exchange, *Fourth Indorsee* v. *Fourth Indorser*, where one of the indorsements is stated to be *by procuration*.

H. Bl Rep. C. B. Minet and Vector *v.* Gibson and Johnson.

AND whereas the said James Hull heretofore, to wit, on the second day of April A. D. 1791, to wit, at Liverpool aforesaid, in the county aforesaid, according to the custom of merchants in that particular, made and drew his certain bill of exchange in writing, at Birmingham, bearing date the day and year last aforesaid, upon Messrs, Masterman, Peters, Walker, and Mildred, bankers, London, and by the said bill then and there required them the said Messrs. Masterman, Peters, Walker, and Mildred, sixty-five days after the date thereof, to pay to the order of one S. L. by the name and addition of Mr. Sand Luff, in the said bill mentioned, eleven pounds eleven shillings value received, and then and there delivered the said bill to the said S. L.; and the said S. L. to whom or to whose order the payment of the said sum of money in the said bill specified was to be made, afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at Liverpool aforesaid, in the county aforesaid, *indorsed* the said bill, according to the aforesaid custom, and by that indorsement appointed the said sum of money, in the said bill mentioned, to be paid to one John Hargreaves or order, and then and there delivered the said bill so indorsed to the said John H.; and the said J. H. to whom or to whose order the payment of the said sum of money, in the said bill specified, was to be made, afterwards, and before the payment of the said sum of money in the said bill mentioned, or any part thereof, to wit, on the day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, *indorsed* the said bill, according to the aforesaid custom, and by that indorsement appointed the said sum of money, in the said bill mentioned, to be paid to one George Dukbar: and the said G. D. to whom or to whose order the said sum of money, in the said bill mentioned, was, by the said last-

First Indorsement *in full.*

Second Indorsement *in blank.*

mentioned

mentioned indorsement, appointed to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill mentioned, or any part thereof, to wit, on the day and year last aforesaid, at L. aforesaid, in the county aforesaid, by one T. S. *by procuration* from the said G. D. and as his agent in that behalf, *indorsed* the said bill, according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said William Corf (*a*) or order, and then and there delivered the said bill so indorsed to the said William Corf; and the said W. C. to whom or to whose order the said sum of money, in the said bill specified, was, by the last-mentioned indorsement, appointed to be paid as aforesaid, afterwards, and before the payment of the said sum of money, in the said bill contained, or of any part thereof, to wit, on the day and year last aforesaid, at L. aforesaid, in the county aforesaid, *indorsed* the said bill, and by that indorsement appointed the contents of the said bill to be paid to the said (*b*) Bernard, and then and there delivered the said bill so indorsed to the said B.: and the said B. avers, that afterwards, at the expiration of the said time in the said bill mentioned, and thereby appointed for payment thereof, to wit, on the ninth day of June in the year aforesaid, at L. aforesaid, in the county aforesaid, the said bill, with the said several indorsements so made thereon as aforesaid, was duly shewn and *presented* at the said Messrs. M. P. W, and M. bankers in London, for acceptance and payment thereof, and due payment was then and there requested to be made of the said bill, according to the tenor and effect of the said bill, and of the said several indorsements so made thereon as aforesaid: but the said A. B. avers, that when the said bill was so shewn and presented at the said Messrs. M. &c. as aforesaid, for acceptance and payment of the same, the same was not either accepted or paid, but acceptance or payment thereof was then and there wholly refused, to wit, at L. aforesaid, in the county aforesaid; of all which premises the said W. C. afterwards, to wit, on the same day and year aforesaid last aforesaid, there had due *notice*: by reason of which said premises, and according to the custom, and by the law of merchants, the said W. C. then and there became liable to pay to the said B. the said sum of money contained in the said bill, when he the said W. C. should be thereto afterwards requested; and being so liable, he the said W. C. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said B. to pay him the said last-mentioned sum of money in the said bill contained, when he the said W. C. should be thereto afterwards requested.

Third indorsement *by procuration.*

Fourth indorsement in blank.

Presentment for acceptance and payment.

Averment that drawee refused to accept or pay.

(*a*) Plaintiff. (*b*) Defendant.

LONDON, *ss.* For that whereas at the said several times hereafter mentioned, the said R. and J. R. and also J. F. J. S. J. S. J. W. J. L. and D. L. were persons residing, trading, and using

Declaration on an *inland bill* by *Fourth Indorsee* v. *Second Indorser*, where third Indorsees are partners, and one of them indorsed the bill for himself and the other.

using commerce within this kingdom, that is to say, at London aforesaid, to wit, &c.; and whereas also the said J. L. and D. L. were at those several times partners and joint dealers together in their trade and commerce, to wit, at, &c.; and the said R. J. R. J. F. J. S. J. S. J. W. J. L. and D. L. being so resident and trading, and the said J. and D. being partners and joint dealers together as aforesaid, the said J. F. on the fifteenth day of September A. D. 1763, to wit, at, &c. according to the custom of merchants from time immemorial there used and approved of within this kingdom, made his certain bill of exchange in writing, subscribed with the hand-writing and name of the said *J. F.* and bearing date the same day and year aforesaid, and then and there directed the said bill to the said *J. S.* by the name of, &c. and by the said bill required the said J. S. two months after the date thereof, to pay to the said *T. S.* by the name of Mr. T. S. or order, forty-five pounds value received, without being further advised by the said J. F. and then and there delivered the said bill to the said T. S.; *which said bill* of exchange he the said J. S. afterwards, and before the payment of the said sum of money contained in the said bill, and before the time appointed by the said bill for payment thereof, to wit, on, &c. aforesaid, upon sight thereof accepted, according to the said custom; and the said T. S. to whom or to whose order the payment of the said sum of money mentioned in the said bill was to be made as aforesaid, afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also (*a*) *before the time appointed by the said bill for payment thereof*, to wit, on the same day and year aforesaid, at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, and by that indorsement appointed the contents of the said bill to be paid to the said (*J. R.*) or order, and then and there delivered the said bill so indorsed to the said *J. R.*; and the said *J. R.* to whom or to whose order the payment of the said sum of money, in the said bill mentioned, was by the said indorsement appointed to be made as aforesaid, after the making of the said indorsement, and before the payment of the said sum of money contained in the said bill, or of any part thereof, *and also before the said time appointed by the said bill for payment thereof*, to wit, on the same day and year aforesaid, at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, and, by the said last-mentioned indorsement, appointed the contents of the said bill to be paid to the said *J. W.* and then and there delivered the said bill so indorsed to the said J. W.; and the said J. W. to whom or to whose order the payment of the said sum of money contained in the said bill was by the said last-mentioned indorsement to be made as aforesaid, after the making of the said last-mentioned indorsement, and before the payment of the said sum of money contained in the said bill, or any part thereof, *and also before the time appointed by the said bill* for

Drawer.

Acceptor.

Payee.

Acceptance.

First Indorsee, second Indorser, and Defendant.

Second Indorsement.

(*a*) A bill may be negociated *after* the day of payment, Lord Ray. 575.; therefore this had better be omitted.

for payment of the money therein mentioned, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, indorſed the ſaid bill, his own proper hand being thereto ſubſcribed, and, by the ſaid laſt-mentioned indorſement, appointed the contents of the ſaid bill to be paid to the ſaid J. L. and D. L. ſo being partners and joint dealers together as aforeſaid, and then and there delivered the ſaid bill ſo indorſed to the ſaid J. L. and D. L.; and the ſaid J. L. and D. L. ſo being partners and joint dealers together in trade as aforeſaid, and the payment of the ſaid ſum of money mentioned in the ſaid bill being by the ſaid laſt-mentioned indorſement to be made to them as aforeſaid, and the ſaid J. L. for himſelf and the ſaid D. L. his ſaid partner, after the ſaid indorſement ſo made to them the ſaid J. L. and D. L. as laſt aforeſaid, and before the payment of the ſaid ſum of money contained in the ſaid bill, or of any part thereof, *and alſo before the time appointed by the ſaid bill for payment of the ſaid ſum of money therein mentioned*, to wit, on, &c. at, &c. aforeſaid, indorſed the ſaid bill, his own proper hand being thereto ſubſcribed, according to the cuſtom of merchants from time immemorial there uſed and approved of; and by the ſaid laſt-mentioned indorſement, the ſaid J. L. for himſelf and the ſaid D. L. his partner, appointed the contents of the ſaid bill to be paid to the ſaid (*plaintiff*); *of which ſaid ſeveral* indorſements ſo made on the ſaid bill as aforeſaid, the ſaid J. S. afterwards, to wit, on, &c. at, &c. had notice: *and the ſaid plaintiff avers*, that the ſaid bill afterwards, and at the end and expiration of the time appointed by the ſaid bill for payment thereof, to wit, on the eighteenth day of November, in the year aforeſaid, at, &c. aforeſaid, was ſhewn and (1) *preſented* to the ſaid J. S. for payment of the money therein mentioned, and that the ſaid J. S. was then and there requeſted by the ſaid (plaintiff) to pay to him the ſaid ſum of money contained in the ſaid bill, according to the tenor and effect of the ſaid bill, and of his ſaid acceptance, and of the ſaid ſeveral indorſements ſo made thereon as aforeſaid; but that the ſaid J. S. did not, when the ſaid bill was ſo ſhewn and preſented to him, or at any other time whatſoever, pay the money therein mentioned, or any part thereof, to him the ſaid (plaintiff), but the payment thereof hath hitherto wholly refuſed and neglected; *of all* which ſaid premiſes the ſaid defendant afterwards, and at the end and expiration of the ſaid two months next after the date of the ſaid bill, and thereby appointed for the payment thereof, to wit, on the ſaid eighteenth day of November, in the year aforeſaid, at, &c. aforeſaid, had (2) notice; and by reaſon of the premiſes, and according to the

Third Indorſee's partners.

Notice of indorſements to acceptor.

Preſentment to acceptor.

Notice to defendant.

(1) Bl. 1. Bull. Ni. Pri. 274. Ed. 1790. Doug. 62. Fort. 376. Lord Raym. 743. 2. Bl. Com. 469. Mar. 2. Ed. 25. Beawes, ſ. 260. 1. Ed. p. 449. and ſ. 252. 1. Ed. 447. Marius, 2. Ed. p. 19. Lord Raym. 1076. Mar. 2. Ed. p. 25. Beawes, ſ. 251. 1. Ed. 447. Mar. 2. Ed. 19. 22. 24. Beawes, ſ. 253. 1. Ed. p. 447. Lutw. 1591. Lord Raym. 281. 1. Barnard. B. R. 303. Str. 829. Fort. 376.

(2) Burr. 267. 1. T. R. 712. 182. 169, 170. Lord Raym. 993. 6. Mod. 80. Salk. 131. 3. Salk. 69. Salomons v. Staveley, B. R. M. 24. G. 3. Doug. 659. 2. T. R. 717. 3 & 4. Ann, c. 9. ſ. 4. and ſ. 6. 9. & 10. Will. 3. c. 17. ſ. 1. Ann. 77, 78. Str. 910. 1. T. R. 169. 168. Malynes, b. 3 c. 6. ſ. 1. 1. Ed p. 265. Mar. 2. Ed. p. 24. Dougl. 497. Str. 217.

ſaid cuſtom, and by the law of merchants, he the ſaid (defendant) became liable to pay to the ſaid (plaintiff) ſaid ſum of money contained in the ſaid bill, when he the ſaid (defendant) ſhould be thereto afterwards requeſted; and being ſo liable, &c. the ſaid (defendant), in conſideration, &c. undertook, &c. to pay, &c. when he ſhould be thereto requeſted. (Money had and received; damages forty-five pounds; and common concluſion.)

BY FIFTH INDORSEE—STATING INDORSEMENT BY FOURTH INDORSEE AS BEFORE.

BY SIXTH INDORSEE.

Declaration on a bill of exchange drawn on a *fictitious* perſon not to be found.
Sixth Indorſee v. Third Indorſer.

YORKSHIRE, to wit. John Morton complains of Thomas Dickinſon, &c. for that whereas, before and at the ſeveral and reſpective times hereinafter mentioned, the ſaid John Morton and Thomas Dickinſon, one Joſeph Graham, and one James Green, and one Thomas Hinchliffe, and one Charles France, and one John Cartwright, and one Richard Earnſhaw, and certain perſons commonly called and known by the names, and uſing the ſtyle and firm of Earnſhaw and Royſton, were perſons reſiding, trading, and uſing commerce within this kingdom, to wit, at, &c.; and being ſo reſident, trading, and uſing commerce as aforeſaid, the ſaid James Graham heretofore, to wit, on, &c. at, &c. according to the uſage and cuſtom of merchants from time immemorial uſed and approved of in this kingdom, made his certain bill of exchange, his own proper hand-writing being thereto ſubſcribed, bearing date the ſame day and year aforeſaid, and then and there directed the ſaid bill of exchange to one John Purviator, by the name and addition of Mr. J. P. No. 1, Aldgate, London; by which ſaid bill of exchange he the ſaid J. G. then and there required the ſaid J. P. to pay, two months after the date thereof, to the order of the ſaid James Green, by the name and addition of Mr. James Green, ſix pounds, value in account, as adviſed by him the ſaid Joſeph Graham; and the ſaid Joſeph Graham then and there delivered the ſaid bill of exchange to the ſaid James Green; and the ſaid James Green, to whoſe order the ſaid ſum of money, in the ſaid bill of exchange ſpecified, was, by the ſaid bill of exchange, to be paid, after the making of the ſaid bill of exchange, and before the payment of the ſaid ſum of money in the ſaid bill of exchange ſpecified, or of any part thereof, to wit, on, &c. at, &c. indorſed the ſaid bill of exchange, according to the ſaid uſage and cuſtom of merchants, and thereby then and there ordered and appointed the ſaid ſum of money, in the ſaid bill of exchange ſpecified, to be paid to the ſaid Thomas Hinchliffe or his order, and then and there delivered the ſaid bill of exchange, ſo indorſed as aforeſaid, to the ſaid T. H.; and the ſaid T. H. to whom or to whoſe order, &c. &c. (T. H. indorſed it over to Charles France, C. F. then indorſed it over to T. D. the defendant; T. D. indorſes it over to John Cartwright, and he indorſes it to Richard Earnſhaw, and he indorſes it over to Earnſhaw and Royſton, who indorſe it over to J. M. the plaintiff:

The ſeveral indorſements ſet out.

then

then go on as follows:) And the ſaid J. M. in fact ſaith, that afterwards, to wit, on, &c. and on divers other days and times between that day and the ſeventh day of October then next following, he the ſaid J. M. did make diligent ſearch and inquiry after the ſaid John Purviator, at No. 1, Aldgate, London, being the place to which the ſaid bill of exchange was ſo directed as aforeſaid, and at divers (4) *other places, in order to ſhew and preſent* the ſaid bill of exchange to him the ſaid J. P. for his acceptance and payment thereof, according to the ſaid uſage and cuſtom of merchants; but that, notwithſtanding ſuch ſearch and inquiry, he the ſaid J. M. (5) *could not at any, or either of theſe times or places*, find the ſaid J. P. nor hath he the ſaid J. P. at any time ſince the making of the ſaid bill of exchange, hitherto accepted the ſame, or paid the money therein ſpecified, or any part thereof, to the ſaid J. M. but wholly neglected ſo to do; of all which ſaid ſeveral premiſes the ſaid T. D. afterwards, to wit, on the day and year laſt aforeſaid, at Halifax aforeſaid, in the county aforeſaid, had notice: by means whereof, and according to the ſaid uſage and cuſtom of merchants, he the ſaid T. D. then and there became liable to pay to the ſaid J. M. the ſaid ſum of money in the ſaid bill of exchange ſpecified, when he the ſaid T. D. ſhould be thereto afterwards requeſted; and being ſo liable, he the ſaid T. D. in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Halifax aforeſaid, in the county aforeſaid, undertook and faithfully promiſed the ſaid J. M. to pay him the ſaid ſum of money in the ſaid bill of exchange ſpecified, when he the ſaid T. D. ſhould be thereto afterwards requeſted. (2d Count like the firſt, for another bill for ſix pounds eight ſhillings of a different date.)

Averment that drawee not to be found.

ACCEPTORS AGAINST DRAWER.

THE method of declaring on a bill drawn by partners is thus— After ſtating the parties to be traders, &c. and the partnerſhip, you ſay: And the ſaid, &c. being ſo reſident, and the ſaid A. and B. being partners as aforeſaid, the ſaid A. for himſelf, and the ſaid B. his ſaid partner, on, &c. to wit, at, &c. made a certain bill of exchange in writing, ſubſcribed with his own proper hand, &c. according, &c. &c.

Declaration againſt Drawers, *partners*.

MIDDLESEX *ſſ.* If George E. ſhall give you ſecurity to proſecute his ſuit, then put, by ſureties and ſafe pledges, Robert D. late of Weſtminſter in the county of Middleſex, haberdaſher, Achilles S. late of the ſame place, haberdaſher, and John P. late of the ſame place, haberdaſher, to ſhew, that whereas heretofore, to wit, on the firſt of November A. D. 1787, at Weſtminſter aforeſaid, in conſideration that the ſaid George, at the ſpecial inſtance and requeſt of the ſaid Robert, Achilles, and John, and for their accommodation, had then and there accepted a certain bill of exchange, bearing date the day and year aforeſaid, drawn

Declaration, K. B. in ſpecial aſſumpſit, by original, upon an *accommodation* bill of exchange, by *Acceptor* againſt the *Drawers, partners*, who had undertaken to provide acceptor with money, when the bill became due. Two Counts; one money laid out and expended; and account ſtated.

by

by the said Robert, Achilles, and John, in their partnership style and firm of D. S. and Co. upon the said George, for the sum of ninety-three pounds of lawful money of Great Britain, payable to certain other persons then and there also carrying on trade in partnership, under the style and firm of Messrs. F. W. and Co. or to their order, at eight months after the date of the said bill, they the said Robert, Achilles, and John undertook, and then and there faithfully promised the said George, that they the said Robert, Achilles, and John would furnish money to him the said George for the payment of such bill, before or at the time when the same should become payable: Yet the said Robert, Achilles, and John, not regarding the said promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this respect, did not, nor would before, nor at the time when the said bill of exchange became payable, or at any time since, furnish money to the said George, but therein wholly have failed and made default; by reason whereof the said George was afterwards, and when the said bill became payable, to wit, on the fourth of July A. D. 1788, at Westminster aforesaid, forced and obliged to pay, and did actually pay, the said sum of money in the said bill specified, to the holders of the said bill. And whereas also the said Robert, Achilles, and John afterwards, to wit, on the twenty-fifth of April A. D. 1789, at, &c. aforesaid, were indebted to the said George in the further sum of, &c. (for money paid, laid out, and expended, and assumpsit thereon.) And whereas also, &c. (indebitatus assumpsit on account stated.) Yet the said Robert, Achilles, and John, not regarding their said two last mentioned promises and undertakings, but contriving, &c. &c. &c.

By ACCEPTOR against DRAWER.

Acceptor against *Drawer* of a bill of exchange, for not taking it up when due, according to his promise, and *indemnifying* plaintiffs, the acceptors, whereby plaintiffs were forced to pay it, together with costs, on a judgment obtained against them thereon.

MIDDLESEX. Solomon Schomberg, late of, &c, was *attached* to answer Andrew Lacon and Edward Carter in a plea of trespass on the case; and thereupon the said plaintiffs by J. E. their attorney, complain, that whereas he the said defendant, on the ninth day of November A. D. 1756, at Westminster in the county of Middlesex, made a certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of; and the said bill, bearing date the said day and year aforesaid, then and there directed to the said plaintiffs, by the name of, &c. and thereby required the said plaintiffs, at two months date, to pay to James Rous or order the sum of fifty pounds as for value of him the said James received, and to place it to account of the said defendant; and the said Edward Carter afterwards, to wit, on the said day and year aforesaid, at Westminster aforesaid, in the county aforesaid, for himself and the said Andrew, at the special instance and request of the said defendant, *accepted* the said bill; and in consideration of the said premises, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that the said

said defendant would pay the said bill when it became due and payable, and *to hold them the said plaintiffs indemnified* therefrom: and the said plaintiffs in fact say, that the said bill, on the twelfth day of November in the year aforesaid, at Westminster aforesaid, became due and payable; whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. did not, when the said bill so became due and payable as aforesaid, or at any other time whatsoever, pay the same, or the said sum of money therein mentioned, or any part thereof, or in any manner whatsoever *indemnify*, or keep, or *hold indemnified*, the said plaintiffs of, from, or against the said bill, according to the said promise and undertaking of the said defendant, but therein wholly failed and made default; and thereupon the said plaintiffs, for their discharge of and from the said bill, and from a judgment at law thereupon recovered against them by the said James Rous, afterwards, to wit, on the eighth day of April 1757, at Westminster aforesaid, were forced and compelled to pay and satisfy, and did then and there pay and satisfy the said sum of fifty pounds to the said James Rous, and a large sum of money, to wit, the sum of fifteen pounds, for costs of suit, to wit, at Westminster aforesaid. (Money Counts.) *Drawn by* MR. WARREN.

[illegible] indemnify.

LANCASHIRE, *ss.* For that whereas, before the making of the promise and undertaking hereafter next mentioned, to wit, on the twentieth day of September A. D. 1780, at L. in the county of Lancaster, one Samuel Heewood, being a mariner in and on board a certain ship or vessel of the said plaintiff, according to the usage and custom of merchants, made his certain bill of exchange in writing, his own hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said plaintiffs, and thereby requested the said plaintiffs, as soon as he the said Samuel *had so much due to him, either by his wages or prize money*, to pay to the said defendant, by the name and description of, &c. or order, the sum of eight pounds four shillings and sixpence, and place the same to his account; and then and there delivered the said bill of exchange to the said defendant; which said bill of exchange afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, was shewn and presented to the said plaintiffs for payment thereof; and thereupon afterwards, to wit, on the same day, &c. aforesaid, at, &c. aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, would then and there pay the said sum of money in the said bill contained to the said defendant, he the said defendant undertook, and to the said plaintiffs then and there faithfully promised, *to refund* the said sum of money to the said plaintiffs, in case any other bills prior to that bill should appear against the said Samuel: and the said plaintiffs in fact say, that they the said plaintiffs did then and there pay the said sum of money, in the said bill of exchange contained, to the said defendant accordingly;

Drawee v. Payee of a bill of exchange, who had accepted and paid it on a *special* promise to refund if any prior bill appeared, which so happened.

accordingly: and the said plaintiffs further say, that afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, a certain other bill of exchange against the said Samuel, bearing date the twenty-fourth of August A. D. 1780, and drawn by the said Samuel upon the said plaintiffs, for payment of ten pounds three shillings and fourpence, by him to one George Wright, being a prior bill of exchange to the said bill of exchange of the said Samuel above mentioned to have been paid by the said plaintiffs to the said defendant, was *presented* to the said plaintiffs for acceptance and payment thereof; of which said premises the said defendant afterwards, to wit, on the said twentieth of September A. D. aforesaid, at, &c. aforesaid, *had notice*, and was then and there requested by the said plaintiffs, to *repay and to refund* to the said plaintiffs the said sum of money in the said first mentioned bill of exchange contained, according to the form and effect of his said premise and undertaking so made in that behalf as aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. hath not, although often afterwards requested, *repaid* or *refunded* the said sum of money in the said first mentioned bill of exchange contained, or any part thereof, to the said plaintiffs; but to *repay* or refund the same, or any part thereof, hath hitherto always refused, and still doth refuse. (2d, Money had and received, and conclusion to that Count.) V. GIBBS.

See Special Assumpsit, special to repay money.

£11. 4s. 3d. London, 31st October, 1786.

Gentlemen,

Three weeks after date pay to my order, eleven pounds four shillings and threepence, value on account with,

To Messrs. Cresswell and Lyons, Attornies at Law, No. 24. Hillard's Court, Old Gravel-lane, Wapping. *Acctd.*

Gentlemen, Your most obedient servant, James Gardner.

for Thomas Creswell and self Charles Lyons.

Declaration on the above, an inland bill of exchange; Drawer against Acceptors, bill payable to his order only, with averment, that he never indorsed it; and where one reputed partner accepted for himself and the other.

LONDON, *ss.* James Gardner complains of Thomas Creswell and Charles Lyons, attornies of the court of our lord the now king, before the king himself, present here in court in their own proper persons, in a plea of trespass on the case, &c. for that whereas the said James Gardner heretofore, to wit, on the thirty-first day of October in the year of Our Lord 1786, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants, made and drew a certain bill of exchange in writing, bearing date the day and year aforesaid, upon the said Thomas and Charles, by the name and description of Messrs. Creswell and Lyons, attornies at law, No. 24, Hillard's court, Old Gravel-lane, Wapping, and thereby required the said Thomas and Charles, three weeks after the date thereof, to pay to the order of him the said James eleven pounds four shillings

shillings and threepence, value on account with him the said John; which said bill of exchange he the said Charles, for himself and the said Thomas in that behalf, afterwards, and before the time appointed for the payment of the money therein mentioned, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, *duly accepted*, according to the custom of merchants, for payment of the money therein mentioned, according to the tenor and effect of the said bill; whereby, and by means of which said several premises, and according to the said custom and the law of merchants, they the said Thomas and Charles became liable to pay the said sum of money in the said bill of exchange mentioned, according to the tenor and effect of the said bill: *and the said* James avers that he the said James did not, at any time before, nor at or after the time appointed by the said bill for payment of the money therein mentioned, indorse the same, or order the contents thereof to be paid to any person or persons whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid; whereof they the said Thomas and Charles afterwards, and whilst the said bill was unindorsed, to wit, on the twenty-third day of November in the said year 1786, there had notice: in consideration of which said several premises they the said Thomas and Charles afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said James, to pay him the said sum of money in the said bill mentioned, when they the said Thomas and Charles should be thereunto afterwards requested. *And whereas* the said James heretofore, to wit, on the said thirty-first day of October in the said year 1786, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants, made and drew his certain other bill of exchange in writing, bearing date the day and year last aforesaid, upon the said Thomas and Charles, by the name and description of Messrs. Creswell and Lyons, attornies at law, No. 24, Hillard's court, Old Gravel lane, Wapping, and thereby required the said Thomas and Charles, three weeks after date, to pay to the order of him the said James eleven pounds four shillings and threepence, value on account with him the said James; which said last mentioned bill of exchange, afterwards, and before the time thereby appointed for the payment of the money therein mentioned, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, *was duly accepted* by and on behalf of the said Thomas and Charles, according to the said custom; whereby, and by reason of which said several premises, and according to the custom and by the law of merchants, they the said Thomas and Charles became liable to pay the said sum of money in the said last mentioned bill specified, according to the tenor and effect of the said bill: and the said James avers that he the said James did not at any time before, or at or after the time appointed by the said bill for the payment of the money therein specified, indorse the said bill, or order the money there-

Duly accepted by one for both.

Never indorsed.

2d Count, stating the bill to have been duly accepted generally

in mentioned to be paid to any person or persons whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid; whereof they the said Thomas and Charles afterwards, and after the time appointed by the said last-mentioned bill for payment of the money therein specified, and whilst the said last-mentioned bill was unindorsed, to wit, on the said twenty-third day of November in the said year of Our Lord 1786, there had notice: in consideration of which said several premises, they the said Thomas and Charles afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said James to pay him the said sum of money in the said last-mentioned bill specified, when they the said Thomas and Charles should be thereunto afterwards requested. (Add Counts for goods sold and delivered, money lent and advanced, laid out, expended, and paid, had and received, account stated, &c. common conclusion, with this addition, after

Conclusion.

stating a request:—" And although the said (plaintiff) hath not " at any time since the making the said promises and undertak- " ings in the said first and second counts above mentioned, in- " dorsed over or negociated the said several bills of exchange, or " either of them, in those premises and undertakings mentioned, " or appointed the money therein or in either of them specified " to be paid to any person or persons whatsoever.") But, &c.

THOMAS BARROW.

FOREIGN, BY DRAWER AGAINST ACCEPTOR.

Declaration on a bill of exchange drawn for a *foreign* sum of money, *Drawer* v. *Acceptor.*

LONDON, to wit. Bernardo Joze Pinto de Olcveyra against Antonio Joze Cæsar, &c.; for that whereas the said plaintiff, on the third day of August in the year of Our Lord 1782, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, made his certain bill of exchange in writing, with his own proper hand thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said defendant, by the name and description of Mr. Antonio Joze Cæsar D[l]. G[l]. D[r]. Porto, and thereby required the said defendant, at fifty days of that date, to pay that third of exchange, the first and second of that of no vigor, to the order of Mr. Joze Ferr[a]. Guim[ls]. the sum of 170=140 reis, value received of himself, and the said 170=140 reis, in the said bill of exchange mentioned, being Portugal money of the value of forty-eight pounds seven shillings and five-pence of lawful money of Great Britain; which said bill of exchange afterwards, to wit, on the same day and year aforesaid, at L. &c. aforesaid, according to the usage and custom of merchants, was shewn and presented to the said defendant for his acceptance; and the said defendant then and there, according to the usage and custom of merchants, accepted

cepted the same: and the said plaintiff in fact saith, that the said Joze Ferr^a. Guim^{is}. hath not yet made any order for the payment of the said sum of money in the said bill of exchange contained. And the said plaintiff in fact further saith, that afterwards, to wit, on the twenty-fifth day of September in the year aforesaid, at Porto in the said bill mentioned, to wit, at London, &c aforesaid, according to the usage and custom of merchants, the said bill of exchange was shewn and presented to the said Antonio Joze Cæsar for payment thereof, and the said defendant was then and there requested to pay the said sum of money in the said bill of exchange contained; but the said defendant then and there wholly refused to pay the said sum of money in the said bill of exchange mentioned; by reason whereof, the said plaintiff afterwards, to wit, on the same day and year last aforesaid, at L. &c. aforesaid, was forced and obliged to pay, and has paid to the said Joze Ferr^a Guim^{is}. the said sum of money in the said bill of exchange contained; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at London, &c. aforesaid, had notice; by reason whereof, and by force of the usage and custom of merchants, the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange contained, when he the said defendant should be thereunto afterwards requested; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London, &c. aforesaid, undertook, and to the said plaintiff then and there faithfully promised to pay to him the said sum of money in the said bill of exchange contained, when he the said defendant should be thereunto afterwards requested. (2d Count for a foreign sum of a different date in a different set of Bills.) W. BALDWIN.

These bills should have been protested.

Præcipe for declaration by *special original* on a bill of exchange, *Drawers, partners*, against *Acceptors, partners*, after its having been twice indorsed, and when due shewn to defendant for payment, who then refused, whereby plaintiffs were obliged by their agents to take it up, and were thereby put to expence, such as commission, protest, &c. &c. The agents take it up for the honour of the drawer.

LONDON, to wit. If Sir Patrick Crawford knight, George Crawford, James Crawford, and George Gibson, have made you secure, then put, by sureties and safe pledges, John Gilmour late of London merchant, that he be before our lord the king, on, &c. wheresoever our said lord the king shall then be in England, to shew; for that whereas, at the several times hereafter mentioned, the said plaintiffs and the said defendant, and one G. M. and one W. C. and T. C. his son, and certain persons using trade and commerce by and in the name, firm, and style of Messrs. Thomas Coutts and Co. were persons residing, trading, and using commerce, to wit, the said plaintiffs and G. M. at Rotterdam in Holland, and the said defendant and the said W. C. and T. C. his son, and the said persons so using trade and commerce in the said name, style, and firm of Messrs. Coutts and Co. within this kingdom of England, to wit, at, &c. in, &c.; and the said plaintiffs were at those several times partners and joint dealers in their said trade

and

and commerce, and the ſaid W, C. and his ſaid ſon were alſo at thoſe ſeveral times partners and joint dealers in their ſaid trade and commerce, and the ſaid perſons ſo uſing trade in the name, ſtyle, and firm of Meſſrs. Coutts and Co. were alſo at thoſe ſeveral times partners and joint dealers in the ſaid trade and commerce; and being ſo reſpectively reſiding, trading, and uſing commerce as aforeſaid, and the ſaid plaintiffs being ſuch partners and joint dealers as aforeſaid, they the ſaid plaintiffs, on, &c. in parts beyond the ſeas, to wit, at Rotterdam aforeſaid, made their certain bill of exchange in writing, the hand-writing of (1) *one of them, for and on their joint and* (1) *partnerſhip account*, and in their joint and partnerſhip name, ſtyle, and firm, to wit, Crawford and Co. being thereunto ſubſcribed, according to the cuſtom of merchants time out of mind uſed and approved of, and the ſaid bill bearing date the day and year aforeſaid, then and there directed to the ſaid J. G. by the name of, &c. and thereby required him the ſaid J. G. at *two uſance*, to pay that their firſt of exchange to the ſaid G. M or order, by the name of Mr. G. M. or order, one hundred and eighty-four pounds ſterling value on account with R. C. and Co. and to place the ſame to account as per advice, and the ſaid plaintiffs then and there delivered the ſaid bill to the ſaid G. M. and the ſaid *two uſance* mentioned in the ſaid bill, at the time (*a*) of the making of the ſaid bill, were, and from thence hitherto have been, and ſtill *are, two calendar months from the day of the date of the bill*, and not any other time whatſoever, according to the ſaid cuſtom, and which ſaid bill the ſaid J. G. afterwards, to wit, on, &c. at &c. accepted, according to the ſaid cuſtom; and the ſaid G. M. to whom, or to whoſe order, the payment of the ſaid ſum of money mentioned in the ſaid bill was to be made, afterwards, and before the payment thereof, or of any part thereof, and alſo before the time appointed by the ſaid bill for payment thereof, to wit, on, &c. at, &c *indorſed* the ſaid bill, his own proper hand being thereunto ſubſcribed, according to the ſaid cuſtom, and by that indorſement appointed the contents of the ſaid bill to be paid to the ſaid W. C. and Son, or order, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid W. C. and Son; and the ſaid W. C. and Son afterwards, and before the payment of the ſaid ſum of money, or of any part thereof, to wit, on, &c. at, &c. indorſed the ſaid bill, the hand-writing of one of them, for and on their joint and partnerſhip account, in their joint and partnerſhip name, ſtyle, and firm, to wit, W. C. and Son, being thereunto ſubſcribed, according to the ſaid cuſtom; and thereby appointed the contents of the ſaid bill to be paid to the ſaid Thomas Coutts and Co. and then and there delivered the ſaid bill, ſo indorſed, to the ſaid T. C. and Co.: and the ſaid plaintiffs in fact ſay, that the ſaid T. C. and Co. afterwards, to wit, on, &c. at, &c. cauſed the ſaid bill, ſo accepted and indorſed as aforeſaid, to be ſhewn and preſented to the ſaid J. G. for payment thereof, and thereby then and there required the ſaid

(1) Lord Raym 175. 1484 Doug. 630.

1ſt Indorſement

2d Indorſement.

(*a*) In declaring on a bill payable at uſance, the time muſt be averred. 1. Salk. 131. 3. Keb. 645.

J. G.

J. G. to pay them the sum of money therein mentioned, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsements so made thereon as aforesaid; but the said J. G. at the said time when the said bill was so presented to him for payment thereof as aforesaid, or at any other time whatsoever, *did not pay* to the said T. C. and Co. the said sum of money mentioned in the said bill, but then and there wholly refused so to do, and therein wholly failed and made default; whereupon the said T. C. and Co. afterwards, to wit, on, &c. at, &c. duly caused the said bill to be *protested* for the said non-payment thereof, according to the said custom: and afterwards, to wit, on, &c. at, &c. according to the said custom, certain persons residing, trading, and using commerce within this kingdom, to wit, at, &c. by and in the name of Messrs. B. B. and Co. appeared before J. B. then being a notary public duly and by lawful authority admitted and sworn, dwelling in London, and being the same notary public by whom the said bill of exchange had been so protested, and according to the said custom, then and there declared before the said notary, that they would pay the said bill under the said protest, for *honour, and on account of the said plaintiffs the drawers* of the said bill, holding them the said drawers, and the acceptor, their executors and administrators, and all others whom it might concern, always obliged unto them the said Messrs. B. B. and Co. for their reimbursement; and thereupon the said Messrs. B. B. and Co. then and there, according to their said declaration and the said custom, paid the said bill under the said protest as aforesaid, together with five shillings and threepence for the (2) charges of the said protest, and afterwards, to wit, on, &c. at, &c. returned the said bill, so protested, to the said plaintiffs; and the said plaintiffs were then and there obliged to pay, and did pay, to the said Messrs. B. B. and Co. for the said bill, and for the (2) exchange and re-exchange of the money therein contained, and the (2) charge of protest, (2) commission, and other charges attending the said non-payment of the said bill, a large sum of money, to wit, the sum of two hundred pounds according to the said custom; of all which premises the said J. G. afterwards, to wit, on, &c. at, &c. had notice: and by reason of the premises, and by force of the said custom, and by the law of merchants, the said J. G. became liable to pay to the said plaintiffs the said sum of money so by them paid to the said Messrs. B. B. and Co. as aforesaid, to wit, the said sum of two hundred pounds, to wit, at, &c. in, &c.; and being so liable, he the said J. G. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money so by them paid, when he should be thereto afterwards requested. And whereas, &c. (another Count on the bill like the first, omitting the payment by B. B. and Co. for the honour of drawer B. B. and Co.; and immediately after stating the protest by Coutts and Co. saying: And thereupon the said T. C. afterwards, to wit, on, &c. at, &c. caused to be returned the said bill, so protested, for non-payment thereof, to the

Non-payment.

Protest.

Paid by certain persons *for the honour* of drawers. 1. Wils. 185. 4 Bro. Parl. Ca. 604. 10. Mod. 36.

(2) Burb. 119. Bl. 760, 761. 6. Mod. 138. Pl. Ass. 28. and 2. T. R. 52. 1. Wils. 185. 4. Bro. Parl. Ca. 607.

2d Count.

the said plaintiffs; and the said plaintiffs were then and there, and thereby, and according to the said custom, forced and obliged to pay to the said T. C. and Co. for the said bill, and for the exchange and re-exchange of the money therein contained, and the charge of the protest, commission, and other charges attending the said non-payment and return of the said bill, a large sum of money, to wit, the sum of two hundred pounds, according to the said custom; of all which premises the said J. G. afterwards, to wit, on, &c. at, &c. had notice: and by reason, &c. &c. as in the first Count to the end, (Add the common Counts, and breach.)

By PAYEE against ACCEPTOR, &c.

Declaration on a *foreign* bill of exchange, *Payee v. Acceptor*, payable at *two usance.*

LONDON, ss. J. S. and T. B. against A. R. for that whereas, at the several times hereafter mentioned, the said J. S. and T. B. and A. R. were persons residing, trading, and using commerce within this kingdom of England, to wit, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, and one W. B. was a person residing, trading, and using commerce in parts beyond the seas, to wit, at Hamburgh; and being so resident and trading respectively as aforesaid, the said W. on the eighteenth day of November A. D. 1749 New Style, at H. aforesaid, to wit, at London aforesaid, in, &c. aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants used and approved of from time immemorial, and the said bill, bearing date the same day and year aforesaid, then and there directed to the said A. by the name of Mr. A. R. merchant, London, and by the said bill required the said A. at (1) two usance to pay that his first per (2) exchange to the said J. and T. by the name of Messrs. Sterling and Banks, or order, one hundred and fifty pounds sterling value on account, as by advice from the said W.; and then and there delivered the said bill to the said J. and T.; which said bill of exchange the said A. afterwards, to wit, on the tenth day of November in the year aforesaid O. S. (or British style), at L. aforesaid, in parish and ward aforesaid, upon sight thereof, accepted, according to the said custom: by reason whereof, and by force of the said custom, and by the law of merchants, the said A. became liable to pay to the said J. and T. the sum of one hundred and fifty pounds specified in the said bill, according to the tenor and effect of the said bill and his said acceptance thereof; and being so liable, &c. (Assumpsit accordingly; Counts for money had and received, and common conclusion); and therefore he brings his suit, &c. (Then go on thus) *With* this, that (*a*) the said J. and T. will verify, that two usance mentioned in any bill of exchange drawn or made at H aforesaid, are, and at the said several times aforesaid were, two months from the date of such bill, and no other time whatsoever. (Add pledges, if in B. R.)

(1) Mar. 2d. Ed. p. 23.
(2) Molloy, b. 2. c. 10. s. 14. Malynes, b. 3. c. 5. p. 261, 262. Marius, p. 7.

(*a*) It should be averred in the declaration what usance is, or it may be taken advantage of on demurror. Viner's Abr. tit. Bill of Exchange, O. 4. 4. V. 256. 3 Keb. 645. Salk. 131. Mar. 2d. Ed. p. 23.

MIDDLESEX,

Declaration on a bill of exchange drawn *by an officer in foreign parts on his agents,* who refused to accept, *Payne v. Drawer.*

MIDDLESEX, to wit. Henry Gurney esquire complains of Jacob Schalch esquire, being, &c. for that whereas, at the several times hereafter next mentioned, the said plaintiff and defendant, and one Richard Cox and Arthur Mair, were persons severally residing, trading, and using commerce, to wit, the said plaintiff Richard Cox and Arthur Mair, within this kingdom of England, to wit, at Westminster, in the county of Middlesex aforesaid, and the said defendant in parts beyond the seas, to wit, at Philadelphia in North America; and being so respectively residing, trading, and using commerce as aforesaid, he the said defendant, according to the usage and custom of merchants from time immemorial used and approved of, on the seventeenth day of July A. D. 1776, at Philadelphia in North America, to wit, at Westminster, &c. made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said R. C. and A. M. by the names and descriptions of Messrs. Cox and Mair, paymasters to the royal artillery, Craig's Court, Charing-cross, London, and thereby required them, at thirty days sight of that his first of exchange, second and third of the same tenor and date unpaid, to pay *to the order of the said plaintiff H. G.* forty pounds sterling *on account of his* (1) *subsistence*, as per advice from him the said defendant; which said bill of exchange afterwards, to wit, on the third day of December A. D. 1776, at Westminster aforesaid, in the county of Middlesex aforesaid, was shewn and presented by the said plaintiff to the said R. C. and A. M. for acceptance thereof; and the said R. C. and A. M. were then and there required by the said plaintiff to accept the said bill according to the said usage and custom; but the said R. C. and A. M. wholly refused to accept the same; whereupon he the said plaintiff then and there caused the said bill to be duly protested for non-acceptance thereof: and the said plaintiff further in fact says, *that he made no order for* the payment of the said sum of money in the said bill specified to any person whomsoever, whereby the same became payable to himself the said plaintiff; and that he the said plaintiff afterwards, to wit, on the fourth day of January 1777, at Westminster, &c. shewed and presented the said bill to the said R. C. and A. M. for payment thereof, and then and there required them to pay him the said plaintiff the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill; but the said R. C. and A. M. then and there wholly refused to pay the said sum of money in the said bill mentioned, or any part thereof, to him the said plaintiff; whereupon he the said plaintiff then and there caused the said bill of exchange to be duly protested for non-payment thereof, according to the usage and custom aforesaid; of all which premises he the said defendant afterwards, to wit, on the day and year last aforesaid, at Westminster, &c. had notice: and by reason thereof, and according to the said usage and custom, and by the

(1) Ld. Raym. 1481. Str. 762. 1. Barn. 12. Str. 24. 1. Wils. 262.

the law of merchants, he the said defendant then and there became liable to pay to the said plaintiff the said sum of money, mentioned in the said bill, upon request; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster, &c. undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money mentioned in the said bill when he the said defendant should be thereto afterwards requested. And whereas also the said defendant afterwards, to wit, on the first day of January A. D. 1785, at Westminster, &c. was indebted, &c. (Common Counts on Indebitatus Assumpsit for money lent and advanced, laid out and expended, had and received, and on an account stated, and common conclusion, to "and therefore he brings "suit, &c." after which the following words are to be added: With this, that the said plaintiff will verify that the said second and third bills of exchange, in the aforesaid first bill of exchange mentioned, are, and each of them is, still wholly unpaid, to wit, at Westminster aforesaid, in the said county of Middlesex.) Pledges, &c.

Averment that all of the set are unpaid.

Declaration in a bill of exchange by the *Payee v. the Drawer.* 2d Count, saying a banker's draft instead of a bill of exchange.

FOR that whereas the said William, on the twenty-fourth day of, &c. at, &c. in, &c. made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to certain persons commonly called and known by the names, and using the style and firm of Messrs. Down Thornton and Free, (by their names, style, and firm aforesaid); by which said bill of exchange he the said William then and there required the said Messrs. D. T. and F. to pay to the said Samuel (by the name and addition of Mr. Samuel Nisbett) or bearer, two hundred and eighty-two pounds, and then and there delivered the said bill of exchange to the said Samuel: and the said Samuel avers, that after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, or of any part thereof, to wit, on, &c. at, &c. he the said Samuel did shew and present the said bill of exchange to the said Messrs. D. T. and F. for payment thereof, and did then and there request the said Messrs. D. T. and F. to pay the said sum of money therein specified according to the tenor and effect thereof; but that the said Messrs. D. T. and F. did not nor would at the said time when the said bill of exchange was so shewn and presented to them for payment thereof as aforesaid, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; whereof the said William afterwards, to wit, on, &c. at, &c. had notice: by means whereof, and according to the usage and custom of merchants, he the said William then and there became liable to pay to the said Samuel the said sum of money in the said bill of exchange specified, when he the said William should be thereto afterwards requested;

quested; and being so liable, he the said William in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook and then and there faithfully promised the said Samuel to pay him the said sum of money in the said bill of exchange specified, when he the said William should be thereto afterwards requested. And whereas the said William, on, &c. at, &c. according to the said usage and custom of merchants, made his certain draft or order in writing for the payment of money, commonly called a banker's draft, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said draft or order to the said Messrs. D. T. and F. by which said draft or order he the said William then and there required the said Messrs. D. T. and F. to pay to the said Samuel (by the name and addition of Mr. Samuel Nisbett) or bearer, two hundred and eighty-two pounds ten shillings, and then and there delivered the said draft or order to the said Samuel; and the said Samuel avers, that he the said Samuel did after the making of the said draft or order, and before the payment of the said sum of money therein specified, or of any part thereof, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, shew and present the said draft or order for payment thereof to the said Messrs. D. T. and F. and then and there required the said Messrs. D. T. and F. to pay to him the said Samuel the said sum of money therein specified, according to the tenor and effect thereof; but that the said Messrs. D. T. and F. did not, nor would at the said time when the said draft or order was so shewn and presented to them for payment thereof as aforesaid, pay the said sum of money therein specified, or any part thereof, to him the said Samuel, but wholly neglected and refused so to do; whereof the said William afterwards, to wit, on, &c. at, &c. had notice: and by means thereof, and according to the said usage and custom of merchants, he the said William then and there became liable to pay to the said Samuel the said sum of money in the said draft or order specified, when he the said William should be thereto afterwards requested; and being so liable, he the said William in consideration thereof afterwards, to wit, on, &c. at, &c. undertook, &c. to pay him the said sum of money in the said draft or order when he the said William should be thereto afterwards requested. And whereas, &c. a third Count like the second, only instead of saying "draft or order," say, "note or instrument."—Add the money Counts, &c.)

2d Count.

AND whereas certain persons using trade and commerce, under the name, style, and firm of Peter Hasenclever and Company, in parts beyond the seas, to wit, at New York aforesaid, in the lifetime of the said Isaac Sears, to wit, on the said twenty-first day of January in the said year of Our Lord 1768, at New

Another Count by *Administratrix* payee against *Acceptors*, who were partners, against drawers of a foreign bill of exchange, (drawn by one of them for himself and the rest in copartnership firm), on Richard Willis, another of them, and authorised to accept for the firm, after acceptance; Willis and several other partners being since dead.

York

York aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, according to the said usage and custom of merchants, made their certain bill of exchange, subscribed with the proper hand-writing of one of them for himself and the rest of them, in their joint and copartnership name, style, and firm of Peter Hasenclever and Company, bearing date the day and year last aforesaid, and then and there directed the said last-mentioned bill of exchange to the said Richard Willis in his lifetime, by the name and description of Richard Willis esquire, London, he the said R. W. then and there being employed as agent, and being duly authorized by the said George Jackson, John Elwin, Hutchinson Mure, Robert Mure, William Robertson, *Peter Hasenclever*, and the said Arthur Forrest, Thomas Dampier, Patrick Crawford, Richard Atkinson, John Devall, Neal Ward, Mary Sleach, Lucy Sleach, Charles Crofts, Andrew Seton and Miles Nightingale deceased in the life of the said A. F. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. to accept for and on the behalf of them and himself the said Richard Willis bills of exchange drawn by the said persons so using trade and commerce as aforesaid, for and on the account of the said G. J. J. E. H. M. R. M. W. R. *P. F.* A. F. R. W. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. and directed to him the said R. W.; and by the said last-mentioned bill of exchange the said persons so using trade and commerce as aforesaid, required the said Richard Willis in his lifetime, at forty days sight, to pay that third of exchange (first and second not paid) to the order of the said Isaac Sears, by the name and description of Mr. J. S. four hundred pounds sterling value of the same, which they thereby required the said Richard Willis to place to the account of *A. C.* (meaning thereby the account of the said G. J. J. E. H. M. R. M. W. R. P. F. A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N.) as per advice, and then and there directed the said last-mentioned bill of exchange to the said Isaac Sears in his lifetime. *And the said Emanuel Elam*, administrator as aforesaid, in fact saith, that the said last-mentioned bill of exchange afterwards, and in the lifetime of the said Isaac Sears, to wit, on the eleventh day of October in the said year of Our Lord 1768, was shewn and presented to the said Richard Willis in his lifetime, for his acceptance thereof; and the said Richard Willis then and there had sight of the said last-mentioned bill of exchange, and being so authorized as aforesaid, then and there, according to the said usage and custom of merchants, accepted the same for and on the behalf of *himself* the said R. W. and the said G. J. J. E. H. M. R. M. W. R. P. H. A. F. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. in the lifetime of the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N.: *by reason of all* which premises, according to the said usage and custom of merchants, the said

G. J.

G. J. J. E. H. M. R. M. W. R. *P. H.* and the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. deceased, in the lifetime of the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A S. and M. N. *became liable* to pay to the said Isaac Sears the said sum of money contained in the said last-mentioned bill of exchange, according to the tenor and effect of the said last-mentioned bill, and of the said acceptance thereof as aforesaid; *and being* so liable, they the said G. J. J. E. H. M. R. M. W. R. P. H. and the said A. F. R. W. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. deceased, in consideration thereof afterwards, and in the lifetime of the said A. F. R. W. T. D. P. C. Richard A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. to wit, on the twenty-third day of November in the said year of Our Lord 1768, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Isaac Sears in his lifetime then and there faithfully promised, to pay him the said sum of money in the said last-mentioned bill of exchange contained, according to the tenor and effect of the said last-mentioned bill of exchange, and of the said acceptance thereof as aforesaid: and the said Emanuel Elam avers that the said first and second in the said last-mentioned bill of exchange mentioned, are not yet paid. [Common money Counts; conclusion; and alledge the granting administration.]

Payee v. Drawer of a foreign bill of exchange after presentment and protest for nonacceptance. Original in B. R.

MIDDLESEX, to wit. If Robert Scott make you secure, &c. then put, by gages and safe pledges, Samuel Thomas Roscow, late of Westminster in the county of Middlesex, gentleman, that he be before our lord the king in fifteen days from the day of Easter, wheresoever our said lord the king shall then be in England, to shew; for that whereas the said Samuel Thomas Roscow, on the twelfth day of December in the year of Our Lord 1782, in and on board of a certain ship or vessel called the Worcester, in certain parts beyond the seas, to wit, at or near Bombay in the East Indies, that is to say, at Westminster in the county of Middlesex aforesaid, according to the usage and custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to one Thomas Curry, by the name and addition of Thomas Curry esquire, Cold Harbour, Gosport; by which said bill of exchange he the said Samuel Thomas Roscow then and there required the said Thomas Curry to pay in London thirty days after sight of that his second bill (his first and third of the same tenor and date not paid) unto the said Robert, by the name and addition of Mr. Robert Scott, or his order, fifty pounds sterling, being for value received of him there, and to place the same to account, with or without

without further advice of him the said Samuel Thomas Roscow; and the said Samuel Thomas Roscow then and there delivered the said bill of exchange to the said Robert: and the said Robert in fact says, that afterwards, to wit, on the sixteenth day of October in the year of Our Lord 1783, to wit, at Westminster in the county of Middlesex aforesaid, the said bill of exchange was shewn and presented to the said Thomas Curry for his acceptance thereof, and the said Thomas Curry then and there had sight of the said bill of exchange, and was then and there requested to accept the same according to the said usage and custom of merchants; but that the said Thomas Curry then and there wholly refused and neglected so to do; and thereupon the said bill of exchange was afterwards, to wit, on the day and year last aforesaid, at Westminster in the county of Middlesex aforesaid, duly protested for non-acceptance thereof, according to the said usage and custom of merchants; of all which said several premises the said Samuel Thomas Roscow afterwards, to wit, on the day and year last aforesaid, at Westminster in the county of Middlesex aforesaid, had notice: by means whereof, and according to the said usage and custom of merchants, he the said Samuel Thomas Roscow then and there became liable to pay to the said Robert the said sum of money in the said bill of exchange specified, when he the said Samuel Thomas Roscow should be thereunto afterwards requested; and being so liable, &c. &c. Assumpsit accordingly.

Drawn by MR. TIDD.

BY FIRST INDORSEE AGAINST FIRST INDORSOR, &c.

First Indorsee v. *First Indorsor* (2) of a *foreign* bill of exchange for payment of star pagodas, after the same had been refused acceptance or payment, and therefore returned by fourth indorsee, protested for non-acceptance and non-payment, to plaintiff, who was [illegible] to take [illegible] pay it [illegible] exchange, interest, [illegible]

T. R. 52. Vide cases [illegible]

(*a*) FOR that whereas one G. C. on, &c. at, &c. according to the custom and usage of merchants, made his certain bill of exchange, with his own proper hand writing thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to one G. M. by the name and description of, &c. Madras, and thereby required the said G. M. at sixty days after sight, to pay that third bill of exchange (first and second not paid) to the order of the said D. T. by the name, &c. of D. T. esquire, two thousand eight hundred star pagodas, value of the same, which the said G. M. should place to account, with or without advice, and then and there delivered the said bill of exchange to the said D. T.: and the said plaintiffs aver, that at the time of the making of the said bill of exchange, the two thousand eight hundred pagodas therein mentioned were of the value of a certain sum of lawful money of Great Britain, to wit, the sum of one thousand five hundred pounds of lawful, &c. to wit, at, &c. aforesaid: and the said plaintiffs further say, that the said D. T. to whose order the payment of the said sum of money,

(*a*) Vide this case reported in Durnford's and East's Reports, Trinity Term, 27. Geo. III.

in

in the ſaid bill of exchange mentioned, was appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at, &c. according to the uſage and cuſtom of merchants, indorſed the ſaid bill of exchange in writing, his own proper hand being thereto ſubſcribed, and by that indorſement appointed the contents of the ſaid bill to be paid to the ſaid plaintiffs, × by the deſcription of, &c. or order, value received, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid plaintiffs; and they the ſaid plaintiffs, to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill of exchange was by that indorſement appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at, &c. according to the uſage and cuſtom of merchants, *indorſed* the ſaid bill of exchange in writing, the proper hand-writing of one of them for himſelf and the other of them being thereto ſubſcribed, and by that indorſement appointed the contents of the ſaid bill of exchange to be paid to certain perſons carrying on trade and commerce under the name, ſtyle, and firm of A. M. and Co. or order, value on account with J. B. C. and R. C. and then and there delivered the ſaid bill of exchange, ſo indorſed, to ſaid A. M. and Co.: and the ſaid plaintiffs further ſay, that the ſaid A. M. and Co. to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill mentioned was by the ſaid laſt-mentioned indorſement appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at P. in parts beyond the ſeas, that is to ſay, at, &c. according to the uſage and cuſtom of merchants, *indorſed* the ſaid bill of exchange in writing, by the ſignature of A. M. and Co. and by that indorſement appointed the ſaid ſum of money in the ſaid bill of exchange mentioned, to be paid to certain other perſons carrying on trade and commerce under the name, &c. of P. D. and Company, or order, value on account, and then and there delivered the ſaid bill of exchange, ſo indorſed as aforeſaid, to the ſaid P. D. &c. to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill of exchange mentioned was by the ſaid laſt-mentioned indorſement appointed to be made: and the ſaid plaintiffs further ſay, that the ſaid P. D. &c. afterwards, to wit, in, &c. at Fort St. George, in parts beyond the ſeas, that is to ſay, at, &c. cauſed the ſaid bill of exchange, ſo indorſed as aforeſaid, to be *preſented* and ſhewn to the ſaid G. M. for his acceptance thereof, according to the ſaid uſage and cuſtom of merchants, and the ſaid G. M. had then and there ſight of the ſaid bill, and was then and there required to accept the ſaid bill of exchange, the firſt and ſecond in the ſaid bill of exchange mentioned being then and there wholly unpaid; but he the ſaid G. M. then and there wholly neglected and refuſed ſo to do; and thereupon the ſaid bill of exchange afterwards, to wit, on, &c. laſt aforeſaid, at Fort St. George aforeſaid, that is to ſay, at, &c. aforeſaid, was in due form of law *proteſted for the non-acceptance* thereof, according to the uſage and cuſtom of merchants; of which ſaid premiſes ſaid defendant, on, &c. at, &c. had notice: and the ſaid plaintiffs further ſay, that the ſaid

1ſt Indorſement.

2d Indorſement.

3d Indorſement.

Bill preſented for acceptance.

Proteſted for non-acceptance.

ſaid P. D. &c. afterwards, and when the ſaid bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on, &c. at Fort St. George aforeſaid, that is to ſay, at, &c. cauſed the ſaid bill of exchange to be *preſented* and ſhewn to the ſaid G. M. for payment thereof; and the ſaid G. M. was then and there requeſted to pay the ſaid ſum of money in the ſaid bill of exchange mentioned, the firſt and ſecond in the ſaid bill of exchange mentioned then and ſtill being wholly unpaid and unſatisfied, to wit, at, &c. but the ſaid G. M. did not then, nor at any other time whatſoever, pay the ſaid ſum of money in the ſaid bill of exchange mentioned, or any part thereof, but then and there, to wit, at Fort St. George, that is to ſay, at, &c. aforeſaid, neglected and *refuſed* ſo to do: and thereupon the ſaid P. D. and Company, afterwards, to wit, on, &c. laſt aforeſaid, at Fort St. George aforeſaid, that is to ſay, at, &c. aforeſaid, cauſed the ſaid bill of exchange to be in due form of law *proteſted for the non-payment* thereof, according to the uſage and cuſtom of merchants: and the ſaid plaintiffs in fact further ſay, that by reaſon of the premiſes, and according to the ſaid uſage, &c. they the ſaid plaintiffs afterwards, to wit, on, &c. laſt aforeſaid, at, &c. aforeſaid, as indorſees of the ſaid bill of exchange, *were obliged to pay, and did pay* the ſaid ſum of money in the ſaid bill of exchange mentioned, together with re-exchange, intereſt, damages, and charges thereupon, amounting to a large ſum of money, to wit, the ſum of one thouſand pounds of lawful, &c: making together, with the ſaid ſum of one thouſand five huudred pounds, a large ſum of money, to wit, the ſum of two thouſand five hundred pounds of like lawful, &c.; of all which premiſes the ſaid defendant afterwards, to wit, on, &c. at, &c. *had notice:* by reaſon of all which premiſes, and according to the uſage, &c. the ſaid defendant became and was liable to pay to the ſaid plaintiffs the ſaid ſum of two thouſand five hundred pounds laſt mentioned; and being ſo, &c. (promiſe of payment upon requeſt.) (2d Count like the firſt, till you come to this mark ×; then ſay, that plaintiffs preſented the ſaid bill for acceptance; then ſtate a refuſal and proteſtation of the bill by the plaintiffs, in the form of the firſt Count; and likewiſe aver, that the plaintiffs preſented the bill for payment, and that it was refuſed, and afterwards the uſual proteſtation); of all which ſaid premiſes the ſaid defendant afterwards, to wit, on, &c. at, &c. had notice: by reaſon whereof, and according to the ſaid uſage, &c. he the ſaid defendant then and there became liable to pay to the ſaid plaintiffs the ſaid ſum of money in the ſaid laſt-mentioned bill of exchange mentioned, togethor with re-exchange, intereſt, and damages, coſts and charges, amounting to a large ſum of money, to wit, the ſum of one thouſand pounds, and making together with the ſaid ſum of one thouſand five hundred pounds, a large ſum of money, to wit, the ſum of two thouſand five hundred pounds of like lawful, &c.; and being ſo liable, he the ſaid defendant

Preſented it for payment, after it became due.

Refuſal of payment.

Proteſted for non-payment.

Plaintiffs, as indorſees, pay contents of the bill.

Notice to defendant.

dant, in consideration thereof (as before). (Like the second, to the end of the protesting for non-acceptance, and then go on as follows). And the said plaintiffs further say, that more than sixty days are elapsed since the day on which the said G. M. so as aforesaid, had sight of the said last-mentioned bill of exchange, to wit, at, &c. by reason of all which said premises, and according to the usage, &c. the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said last-mentioned bill specified, together with re-exchange, costs, &c. amounting to a large sum of money, to wit, the sum of, &c. and being so liable, he the said defendant afterwards, &c. undertook, &c. (A Count followed for money laid out, and another for money had and received; a sixth, on an account stated; and common conclusion.) G. WOOD.

Averment, the sixty days are elapsed.

MIDDLESEX, to wit. For that whereas the said John, William, and S. Strachey, Peter O'Brien Sevington, and Catharine S. heretofore at the respective times hereafter mentioned were persons residing, &c. to wit, the said S. S. W. R. and C. S. in parts beyond the seas, to wit, at, &c. in, &c. and the said P. O'B. S. in parts beyond the seas, to wit, at, &c. in, &c. and the said J. B. within this kingdom, to wit, at W. in the county of Middlesex; and being so respectively resident and trading, the said W. on the twenty-fifth day of December A. D. 1763, in parts beyond the seas, at, &c. aforesaid, to wit, at, &c. aforesaid, in the county aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of within this kingdom, the said bill bearing date the day and year aforesaid, and directed the same to the said P. by the name of Mr. P. O'B. S. New York, and by the said bill required him the said P. to pay, three months after the date thereof, to the said S. S. by the name of, &c. or order, forty-five pounds York currency, for value received, and to place the same to the account of the said William; *which said bill of exchange he the said P. O'B. afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof (a), and also before the time appointed by the said bill for the payment thereof, to wit, on the day and year aforesaid, in parts beyond the seas, at New York aforesaid, to wit, at, &c. aforesaid, in the county aforesaid, upon sight thereof accepted, according to the said custom:* and the said J. further saith, that the said S. S. to whom, or to whose order, the payment of the said sum of money contained in the said bill was to be made, afterwards and before the payment of the said sum of money contained in

Declaration on a *foreign* bill of exchange, *Indorsee* of (2) *Executrix* of *Payee v. Drawer*, indorsed after time for payment.

(2) Vide 3. Bac. Abr. 610. and the authorities there cited; also 3. Wils. 1.

(a) This averment had better be omitted, lest the fact should turn out otherwise, when it would be a fatal variance. Cunningh. Law of Bills, 84. and the authorities there cited. Lord Raym. 575.

Payee died, having first made his will, and appointed executrix.

in the ſaid bill, or of any part thereof, to wit, on the ſame day and year aforeſaid, in parts beyond the ſeas, at A. aforeſaid, to wit, at, &c. aforeſaid, in the county aforeſaid, died, having firſt duly made, publiſhed and declared, his laſt will and teſtament in writing, and thereby appointed the ſaid C. S. ſole executrix; who afterwards, to wit, on the day and year aforeſaid, in parts beyond the ſeas, to wit, at A. aforeſaid, that is to ſay, at Weſtminſter aforeſaid, in the county aforeſaid, duly proved the ſame, and took upon herſelf the burthen of the execution thereof; and that the ſaid C. S. executrix as aforeſaid, as ſuch executrix, afterwards and before the payment of the money in the ſaid bill contained, or of any part thereof, to wit, on the ſame day and year aforeſaid, in parts beyond the ſeas, to wit, at A. aforeſaid, that is to ſay, at Weſtminſter aforeſaid, in the county aforeſaid, according to the ſaid cuſtom, indorſed the ſaid bill, her own proper hand being thereto ſubſcribed, and by that indorſement appointed the contents of the ſaid bill to be paid to the ſaid J. B. and then and there delivered the ſaid bill, ſo indorſed, to the ſaid J. B.: and the ſaid J. avers, that the ſaid bill, at the end and expiration of the time appointed by the ſaid bill for payment thereof, to wit, on the ſeventh day of September in the year of Our Lord 1764, in parts beyond the ſeas, to wit, at New York aforeſaid, that is to ſay, at Weſtminſter aforeſaid, in the county aforeſaid, was ſhewn and preſented, &c. (as in the Precedents of *Payee* v. *Drawer*, with aſſumpſit to pay on requeſt. Add another Count, leaving out what is in italic, but ſtate that the drawee refuſed to accept or pay, &c. as before; money had and lent; and common concluſion.)

N. B. This bill was(3) indorſed after time for payment was expired, and after the bill was preſented for payment.

(3) 1. Show. 163. 12. Mod. 410. Lord Raym. 575. 17. Geo. III. c. 30. ſ. 1. 27. Geo. III. c. 16.

Indorſee of a foreign bill of exchange againſt the *Drawer*, where the (*a*) *drawee was not to be found.*

LONDON, *ſſ.* For that whereas, at the ſeveral times hereafter mentioned, the ſaid S. B. J. M. Thomas Bird, and George Harvey, and one other J. M. were perſons reſiding, trading, and uſing commerce, to wit, the ſaid J. M. firſt named, in parts beyond the ſeas, to wit, at Grenada, in the Weſt Indies; and the ſaid S. B. Thomas Bird, and George Harvey, and J. M. ſecondly mentioned, within this kingdom, to wit, at L. aforeſaid, in the pariſh of St. Mary-le-Bow, in the ward of Cheap. And whereas alſo the ſaid Thomas Bird and George Harvey, ſo being partners and joint dealers together as aforeſaid, the ſaid J. M. firſt named, on twelfth day of November A. D. 1786, in parts beyond the ſeas, to wit, at G. aforeſaid, that is to ſay, at L. aforeſaid, in the pariſh and ward aforeſaid, made his certain bill of exchange in writing, ſubſcribed with his own proper hand, according to the cuſtom of merchants from time immemorial uſed and approved of within this kingdom, the ſaid bill bearing date the ſame day and year aforeſaid, and then and there directed the ſaid bill to the ſaid J. M. ſecondly named, by the name of Mr J. M. at Meſſrs. J. and R. Hunt's, Love Lane,

(*a*) Lord Raym. 743. Str. 1087.

London,

London, and by the said bill required the said J. M. secondly named to pay, at sixty days sight of that his first bill of exchange (second and third of equal tenor and date not paid), unto the said T. B. and G. H. by the names of Messrs. B. and H. or order, thirty-three pounds six shillings and fivepence value received, and then and there delivered the said bill to the said T. B. and G. H.: and the said T. B. for himself and the said G. H. his said partner, to whom, or to whose order, the payment of the said sum of money mentioned in the said bill was to be made, afterwards, and before the payment of the said sum of money mentioned in the said bill, or of any part thereof, (*a*) *and also before the time appointed by the said bill for payment thereof*, to wit, on the day and year aforesaid, to wit, at L. aforesaid, in the parish, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, according to the custom of merchants from time immemorial used and approved of within this kingdom; and by the said indorsement the said T. B. for himself and the said G. H. his said partner, appointed the contents of the said bill to be paid to the said S. B. and then and there delivered the said bill so indorsed to the said S. B.: and the said S. B. further saith, that he the said S. B. afterwards, within a reasonable time after the making of the said bill and the indorsement thereof to the said S. B. to wit, on the eighth day of February, A. D. 1739, at L. aforesaid, in the parish, &c. aforesaid, (*b*) *made enquiry* after the said J. M. secondly named, upon whom the said bill was drawn, at the house of the said J. and R. Hunt's in the said bill mentioned, with intent to shew and present the said bill to the said J. M. secondly named, for his acceptance thereof, and to request the said J. M. secondly mentioned to accept the same, and to pay the said sum of money therein contained to the said S. B. according to the tenor and effect of the said bill, and of the said indorsement so made thereon as aforesaid; but that the said J. M. secondly named was not then there found, nor could the said S. B. then, nor hath he been able hitherto since, to find the said J. M. secondly mentioned there, or in this kingdom; nor hath he ever paid to the said S. B. the said sum of money mentioned in the said bill, or any part thereof, but the same still remains wholly due and unpaid to the said S. B. to wit, at L. aforesaid, in the parish, &c. aforesaid: by means whereof, and according to the said custom, and by the law of merchants, the said J. M. (the defendant) became liable, &c. according to the tenor and effect of the said bill, and of the said indorsement so made thereon as aforesaid, when he should be thereto afterwards requested; and being so liable, &c. [Assumpsit accordingly; money had, &c. and common conclusion.)

Indorsed by B. for self and part.

(*a*) This averment had better be omitted. For the reasons vid. note (*a*), p. 305.

(*b*) It is sufficient to say, that drawee *non fuit inventus*, without stating that inquiry was made after him, Carth. 509, 510.; but it is the safest way to insert it, as the Books seem to vary.

Declaration, *Indorsee* against defendants as *Drawers* by *procuration* of a bill of exchange under the following circumstances: They had a house at Dominica, and another in London; Bruce, their attorney at Dominica, drew the present bill on their house in London, which was neither accepted nor paid, but protested for both. Declaration contains two Counts; first, stating the bill to have been *protested* for *non-acceptance*; second the like, with the subsequent *protest for non-payment*.

FOR that whereas the said R. B. J. T. and R. S. one Abraham Shaw, and certain persons using the style and firm of Townson and Sorsbie, at the several times hereafter mentioned, were residing, &c. to wit, the said defendants and the said A. S. in parts beyond the seas, i. e. at D. and the said plaintiff and the said persons using the style and firm of, &c. within this kingdom, to wit, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; and being so respectively resident, &c. they the said defendants, by Robert George Bruce their attorney, by them the said defendants for that purpose lawfully authorized and appointed, on the twenty-fifth day of July, A. D. 1778, in parts beyond the seas, i. e. at D. aforesaid, to wit, at London aforesaid, in, &c. aforesaid, made their certain bill of exchange in writing, their own proper names being thereto *subscribed (to wit, by the said R. G. B. their attorney)*, according to the custom of merchants from time immemorial used and approved of within this kingdom, and then and there directed the said bill to the said persons using, &c. (to wit, by the style and firm of Messrs. Townson and Sorsbie, merchants, London), and by the said bill required the said persons using, &c. at ninety days sight of that their first bill of exchange, to pay unto the order of the said A. S. three hundred and seventy-eight pounds three shillings sterling value received, and to charge the same, with or without further advice, to the account of the said defendants, and then and there delivered the said bill to the said A. S.; and the said A. S. to whose order the payment, &c. (shew the indorsement to plaintiff); of which said indorsement, so made on the said bill as aforesaid, the said persons using, &c. upon whom the same was drawn, afterwards, to wit, on the fifth day of October, in the said year 1778, to wit, at, &c. had notice; and the said bill was then and there, to wit, on (1), &c. at, &c. by him the said plaintiff shewn and presented to the said persons using, &c. (state the presentment of the bill for acceptance, refusal, and *protest for non-acceptance*, and aver the bill not to have been negociated); of which said several premises they the said defendants afterwards, to wit, on the day and year last aforesaid, at, &c. had notice: by reason whereof, and according, &c. defendants became liable, &c. according to the tenor and effect of the said bill; and being so liable, &c. (Assumpsit accordingly.) And whereas the said plaintiff, the said defendants, and the said A. S. and the said persons using, &c. being so respectively resident, &c. (Go on as in the first Count till you have shewn the protest for non-acceptance, then proceed thus:)—And the said plaintiff further saith, that he the said plaintiff, after the expiration of ninety days after the said bill was so presented for acceptance, to wit, on sixth January 1779, at, &c. aforesaid, duly caused the said bill to be shewn and presented unto the said persons using, &c. for payment thereof, and then and there required them to pay the money therein specified unto him the said plaintiff, according to the tenor of the said last mentioned bill; but they the said persons using, &c. did not, nor did either of them pay, nor have they or either of them at any time hitherto paid, the said money, or any

(1) Day bill was presented and protested for *non-acceptance*.

Second Count, Protest for *non-payment*.

any part thereof, to him the said plaintiff (he the said plaintiff not having negociated the said bill, or indorsed the same, or appointed the contents thereof to be paid to any other person); but the said persons using, &c. then and there wholly refused so to do: and thereupon he the said plaintiff then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, duly caused the said bill to be *protested for non-payment* thereof; of all which premises they the said defendants afterwards, to wit, on seventh February, in the year last aforesaid, at, &c. aforesaid, had notice: by reason whereof, &c. defendants became liable to pay, &c. when requested; and being so liable, &c. (Assumpsit accordingly; and the usual common Counts; and common conclusion.)

I Fear you cannot have the evidence of Mr. Bruce (the defendant's attorney), unless plaintiff could venture to release him, and that you could also procure a release to Mr. Bruce from Mr. Shaw. But if he has a letter of attorney to draw bills, and you could produce *that*, it might be evidence. The answer specified in the protest for non-payment amounts, in my opinion, almost to a tacit acknowledgement of Mr. Bruce's authority. You should learn what answer was given on presenting the bill for acceptance.

J. MORGAN.

Indorsee v. Acceptor of a foreign bill of exchange.

THAT whereas heretofore, to wit, on the seventeenth day of April, A. D. 1780, in parts beyond the seas, that is to say, at St. Lucia, in the West Indies, to wit, at W. in the said county of Middlesex, a certain person, using commerce in and under the name and description of J. S. Burne, made his certain bill of exchange in writing, bearing date the day and year aforesaid, according to the custom of merchants in that respect used and approved of, and then and there directed the said bill to the said James Burne, by the name and description of Mr. James Burne, Custom-House, London, and thereby directed the said James Burne, at thirty days sight of that his first bill of exchange (his second, third, and fourth, of the same tenor and date, not paid), to pay to one John Duffy, in the said bill mentioned, or order, the sum of twenty-five pounds sterling, without further advice, and then and there delivered the said bill to the said John Duffy; and the said John Duffy, to whom or to whose order the payment of the said sum of money in the said bill of exchange specified was to be made, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed the said bill, according to the custom of merchants in that particular, and by that indorsement appointed the money in the said bill of exchange specified to be paid to the said Andrew Mackenzie, and then and there delivered the said bill so indorsed to the said A. M.; of which said indorsement so made on the said bill as aforesaid, the said James Burne afterwards, to wit, on the first day of August, A. D. 1782, at W. aforesaid, had notice; and the said bill was then and there shewn and presented to the said James Burne, who then and there, that is to say, on the day and year last aforesaid, at, &c. aforesaid,

(1) Special acceptance. Burr. 1674. Bull. Ni. Pri. Ed. 1790, 270. Str. 214. H. 1195. 221. 11. Mod. 190. Comb. 452.

according to the cuſtom of merchants in that particular, (1) *accepted the ſaid bill, to pay the ſame, and the money therein ſpecified, on the twenty-fifth day of January, A. D.* 1783: whereby, and by reaſon of which ſaid ſeveral premiſes, and by force of the cuſtom and law of merchants, he the ſaid James Burne became liable to pay to the ſaid A. M. the ſaid ſum of money in the ſaid bill ſpecified, according to the tenor and effect of his aforeſaid acceptance of the ſaid bill, and the ſaid indorſement ſo thereon made as aforeſaid; and being ſo liable, he the ſaid James Burne, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, undertook, and then and there faithfully promiſed the ſaid A. M. to pay him the ſaid ſum of money in the ſaid bill ſpecified, *according to the tenor and effect of the aforeſaid acceptance* of the ſaid bill, and the ſaid indorſement ſo thereon made as aforeſaid.

Declaration by original in B. R. on a bill of exchange drawn in *foreign* parts. *Indorſee againſt Drawer.*

LONDON, to wit. If John Garden make you ſecure, &c. then put, by gages and ſafe pledges, John Baker, late of Ramſgate, in the county of Kent, eſquire, that he be before our lord the king, in fifteen days from the day of Eaſter, whereſoever our ſaid lord the king ſhall then be in England, to ſhew; for that whereas, at the time of the making the bill of exchange hereafter mentioned, the ſaid John Garden and John Baker, and one Robert Gibſon, and one Grey Elliott, eſquire, were perſons reſpectively reſiding, trading, and uſing commerce, that is to ſay, the ſaid J. B. and R. G. in parts beyond the ſeas, to wit, at Bahamas, in New Providence, in America, and the ſaid J. G. and G. E. in this kingdom, to wit, at London aforeſaid, in the pariſh of St. Mary-le-Bow, in the ward of Cheap; and being ſo reſpectively reſident, trading, and uſing commerce as aforeſaid, the ſaid J. B. heretofore, to wit, on the twenty-third day of June in the year of Our Lord 1785, in parts beyond the ſeas, to wit, at Bahamas, in New Providence aforeſaid, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid, according to the uſage and cuſtom of merchants from time immemorial uſed and approved of, made his certain bill of exchange in writing, his own proper hand being thereunto ſubſcribed, bearing date the ſame day and year aforeſaid, and then and there directed the ſaid bill of exchange to the ſaid G. E. by the name and addition of Grey Elliott, eſq. under ſecretary of ſtate, Whitehall; by which ſaid bill of exchange he the ſaid J. B. then and there required the ſaid G. E. to pay, three months after ſight thereof, that his firſt bill of exchange for two hundred pounds to the ſaid R. G. by the name and addition of Captain Robert Gibſon, or order, value received, and then and there delivered the ſaid bill of exchange to the ſaid R. G.; and the ſaid R. G. to whom or to whoſe order the payment of the ſaid ſum of money, in the ſaid bill of exchange ſpecified, was by the ſaid bill of exchange to be made, after the making of the ſaid bill of exchange, and before the payment of the ſaid ſum of money in the ſaid bill of exchange ſpecified, or of any part

thereof,

thereof, to wit, on the fifteenth day of Auguſt, in the year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, indorſed the ſaid bill of exchange, according to the ſaid uſage and cuſtom of merchants; by which ſaid indorſement he the ſaid R. G. then and there ordered and appointed the ſaid ſum of money, in the ſaid bill of exchange ſpecified, to be paid to the ſaid J. G. and then and there delivered the ſaid bill of exchange ſo indorſed to the ſaid J. G. And the ſaid J. G. in fact ſaith, that after the making of the ſaid bill of exchange, to wit, on the day and year laſt aforeſaid, at London, &c. the ſaid bill of exchange was ſhewn and preſented to the ſaid G. E. for his acceptance thereof, according to the ſaid uſage and cuſtom of merchants, and the ſaid G. E. then and there had ſight of the ſaid bill of exchange, and was then and there requeſted to accept the ſame, but that the ſaid G. E. then and there wholly refuſed and neglected ſo to do; and although the ſaid bill of exchange was afterwards, and after the expiration of three months from the day and year laſt aforeſaid, to wit, on the eighteenth day of November, in the year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, ſhewn and preſented to the ſaid G. E. for payment thereof, according to the ſaid uſage and cuſtom of merchants; and although the ſaid G. E. was then and there requeſted to pay the ſaid ſum of money therein ſpecified, yet the ſaid G. E. did not, nor would, at the ſaid time when the ſaid bill of exchange was ſo ſhewn and preſented to him for payment thereof as aforeſaid, or at any time afterwards, pay the ſaid ſum of money therein ſpecified, or any part thereof, but wholly refuſed and neglected ſo to do; of all which ſaid ſeveral premiſes the ſaid J. B. afterwards, to wit, on the day and year laſt aforeſaid, at L. &c. had notice: by means whereof, and according to the ſaid uſage, &c. he the ſaid J. B. then and there became liable to pay to the ſaid J. G. the ſaid ſum of money in the ſaid bill of exchange ſpecified, when he the ſaid J. B. ſhould be thereto afterwards requeſted; and being ſo liable, &c. (Counts for money laid out, had, and received; account ſtated; and common concluſion.)

Drawn by Mr. TIDD.

Declaration on a bill of exchange for *foreign money*, at the ſuit of the *Executors* of *Indorſee* v. *Indorſer*.

LONDON, to wit. Solomon Solomons and Judah Philip Solomons, executors of the laſt will and teſtament of Philip Solomons deceaſed, complain of Richard Staveley, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf; for that whereas the ſaid Philip Solomons, the teſtator, in his lifetime, the ſaid Richard, and one John O'Donnell, and one Eliza Parkinſon, were, at the ſeveral times hereafter mentioned, perſons reſiding, trading, and uſing commerce, to wit, the ſaid P. S. the teſtator, Richard, and Eliza, at London, in the pariſh of St. Mary-le-Bow, in the ward of Cheap, and the ſaid John O'Donnell in parts beyond the ſeas, to wit, at Bengal, in the Eaſt Indies; and being ſo reſiding, trading, and uſing commerce reſpectively, ſhe the ſaid Eliza, according to the cuſtom of mer-

chants from time immemorial used and approved of, on the first day of January, in the year of Our Lord 1778, at London aforesaid, in the parish and ward aforesaid, made her certain bill of exchange in writing, her own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said John O'Donnell, by the name and description of John O'Donnell, esquire, Ferokabad or Calcutta, Bengal, and thereby required, at sixty days sight of that her second of exchange, her first and third of the same tenor and date not being paid, to pay to the said Richard, by the name and addition of Richard Staveley, esquire, or order, in Calcutta, five thousand current rupees, for value received, with or without advice, and then and there delivered the said bill to the said Richard: and the said Solomon and Judah Philip, executors as aforesaid, aver, that the said five thousand current rupees were and are *foreign money*, to wit, money of Bengal, in the East Indies, and were and are of great value, to wit, of the value of one thousand pounds of lawful money of Great Britain; and the said Richard, to whom or to whose order the payment of the said sum of money, mentioned in the said bill, was to be made, afterwards, and before the payment thereof, or of any part thereof, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, *indorsed* the said bill, his own proper hand being thereto subscribed; and by that indorsement he the said Richard appointed the contents of the said bill to be paid to the said Philip Solomons in his lifetime, and then and there delivered the said bill, so indorsed as aforesaid, to the said Philip Solomons in his lifetime: and the said Solomon and Judah Philip, executors as aforesaid, in fact say, that the said Philip Solomons in his life-time, afterwards, to wit, on, &c. at Bengal aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, shewed and presented the said bill to the said John for his acceptance thereof, according to the said custom, and then and there required him to accept the same; but that the said John, when the said bill was so presented to him by the said Philip in his lifetime for such purpose, *did not accept the said bill, but then and there wholly refused then or ever to accept* the same, or pay to the said Philip in his lifetime the said sum of money mentioned therein, or any part thereof: and the said Solomon and Judah Philip, executors as aforesaid, further say, that the said Eliza hath not paid the said sum of money mentioned in the said bill, or any part thereof, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, or to either of them, but to pay the same, or any part thereof, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, or to either of them since the death of the said Philip, she the said Eliza hath hitherto wholly refused, and still refuses; of all which said promises the said Richard afterwards, *and with all convenient speed, to wit, on, &c. at, &c. had* (1) *notice*: by reason whereof, and by force of the said custom and law of merchants, the said Richard became liable to pay to the said Philip,

Indorsement.

Refusal to accept.

Burr. 2670.

in his lifetime, the said sum of money mentioned in the said bill; and the said Richard being so liable, in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully promised the said Philip, in his lifetime, to pay him the said sum of money mentioned in the said bill, when he should be thereto afterwards requested. And whereas, at the several times hereafter mentioned, the said Philip in his lifetime, John, Richard, and Eliza, so being respectively residing, trading, and using commerce as aforesaid, she the said Eliza, according to the said custom of merchants, afterwards, to wit, on, &c. at, &c. in, &c. made her certain other bill of exchange in writing, her own proper hand being thereto subscribed, bearing date, &c. &c. (Finish this Count same as the first, only, instead of "five thousand "rupees," say "ten thousand," of the value of two thousand pounds. Add the common money Counts.) Yet the said Richard, not regarding, &c. but contriving, &c. the said Philip in his lifetime, and the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, in this respect, hath not yet paid the said several sums of money, or any part thereof, *either in foreign money*, or in lawful money of Great Britain, at Calcutta aforesaid, or elsewhere, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, or to either of them, although so to do the said Richard was requested by the said Philip in his lifetime, and often afterwards, and by the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, to wit, on, &c. at, &c. but he to pay the same, or any part thereof, to them, or any or either of them, hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said Solomon and Judah, or to either of them, to the damage of the said Solomon and Judah, as executors as aforesaid, of three thousand pounds; and therefore they bring their suit, &c.: with this, that the said Solomon and Judah will verify, that the first and third bills of exchange, of the same tenor and date of the said bills of exchange in this declaration mentioned, are not, nor is either of them, paid; and the said Solomon and Judah bring here into court the letters testamentary of the said Philip the testator in his lifetime, which sufficiently prove to the Court here, that they are executors of that will, and have the administration thereof.

Second Count.

Conclusion.

Averment that first and third are not paid.

Profert of letters testamentary.

J. MORGAN.

[illegible] 5 T. R. 239.

And the said Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the said promises and undertakings in the said first and second Counts of the said declaration mentioned, says, that the said Solomon and Judah (*actio non*); because he says, that the said first and second Counts of the said declaration, and the matters therein contained, are not sufficient in law for the said Solomon and Judah to have their said action thereof maintained against him the said Richard; to which said first and second Counts of the said declaration, in the manner the same are above made, the said Richard is not under any necessity, nor

Demurrer to the *first two Counts*; and, as to the common Counts, that defendant did not undertake, &c.

obliged by the law of the land, to anſwer; and this he is ready to verify: wherefore, for want of a ſufficient declaration in this behalf, he prays judgment, and that the ſaid Solomon and Judah may be barred from having or maintaining their aforeſaid action thereof againſt him, &c.: and as to the ſaid promiſes and undertakings in the ſaid third, fourth, fifth, and laſt Counts of the ſaid declaration mentioned, the ſaid Richard ſays, that he did not undertake and promiſe in manner and form as the ſaid Solomon and Judah have above thereof complained againſt him; and of this he puts himſelf upon the country, &c.; and the ſaid Solomon and Judah do the like, &c. F. BOWER.

Joinder in demurrer.

And the ſaid Solomon and Judah ſay, that by reaſon of anything above alledged by the ſaid Richard as to the firſt and ſecond Counts of the ſaid declaration, they the ſaid Solomon and Judah ought not to be barred from having and maintaining their ſaid action thereof againſt the ſaid Richard; becauſe they the ſaid Solomon and Judah ſay, that the ſaid firſt and ſecond Counts of the ſaid declaration, and the matters therein contained, are good and ſufficient in law for them the ſaid Solomon and Judah to have and maintain their ſaid action againſt the ſaid Richard; which ſaid firſt and ſecond Counts of the ſaid declaration mentioned, and the matters therein contained, they the ſaid Solomon and Judah are ready to verify and prove, as the Court ſhall award: and becauſe the ſaid Richard hath not anſwered the firſt and ſecond Counts of the ſaid declaration, nor hitherto in any manner denied the ſame, they the ſaid Solomon and Judah pray judgment, and their damages by reaſon of the premiſes, to be adjudged to them, &c. J. MORGAN.

Judgment was given for the plaintiffs.

* protest not being an objection available upon oral demurrer. Dougl. [illegible] [† 144] a.c.

Declaration on a foreign bill of exchange by *Inderſees* againſt an *Acceptor* who accepted for the *honour of the drawers*, merchants abroad, to prevent the bill being returned for *non-acceptance* by drawees, who had refuſed to accept, (*ſtating the cuſtom*) See the laſt precedent, ſtating the cuſtom (a)

FOR that whereas there now is, and from time whereof the memory of man is not to the contrary there hath been, a certain ancient and laudable cuſtom uſed and approved of amongſt merchants and other perſons reſiding, trading, and uſing commerce within this kingdom, and merchants and other perſons reſiding, trading, and uſing commerce in parts beyond the ſeas, namely, that if any merchant or other perſon reſiding, trading and uſing commerce in parts beyond the ſeas ſhall at any time have made any bill or bills of exchange in writing, ſubſcribed with his own hand, and ſhall have directed ſuch bill or bills of exchange to any merchant or other perſon reſiding, trading and uſing commerce in this kingdom, and by ſuch bill or bills ſhall have required ſuch merchant or other perſon to whom ſuch bill or bills ſhall have been ſo directed, to pay any other merchant or other perſon reſiding, trading, and uſing commerce in parts beyond the ſeas, or to the order of ſuch merchant or other perſon, any ſum or ſums of money mentioned in ſuch bill or bills, at any time or times by ſuch bill

(a) The cuſtom of merchants is here ſtated merely to ſhew what it is: modern precedents omit it.

or bills appointed for the payment thereof; and if any such merchant or other person to whom, or to whose order, any such sum or sums of money shall have been by such bill or bills made payable, before the payment of any such sum or sums of money mentioned in such bill or bills, or any part thereof, and before the time appointed by such bill or bills for the payment thereof, shall have *indorsed* any such bill or bills, his own proper hand-writing being thereto subscribed, and by such indorsement shall have appointed the contents of such bill or bills to be paid to any other merchant or other person residing, trading, and using commerce within this kingdom, and shall have delivered such bill or bills, so indorsed, to such merchant or other person to whom such bill or bills shall have been so indorsed; and if such merchant or other person to whom such bill or bills shall have been so indorsed shall have *presented* such bill or bills to such merchant or other person to whom such bill or bills shall have been so directed, for acceptance thereof, and shall have required such merchant or other person to whom such bill or bills shall have been so directed, to *accept* such bill or bills, and such merchant or other person to whom such bill or bills shall have been so directed shall have *refused to accept* such bill or bills, and such merchant or other person to whom such bill or bills shall have been so indorsed shall have caused such bill or bills to be duly *protested for want of acceptance* thereof: and if such merchant or other person to whom such bill or bills shall have been so indorsed shall afterwards, when such bill or bills shall have become payable, have *presented* such bill or bills to such merchant or other person to whom such bill or bills shall have been so directed for payment thereof, and shall have required such merchant or other person to whom such bill or bills shall have been so directed, to pay such sum or sums of money in such bill or bills mentioned; and if such merchant or other person to whom such bill or bills shall have been so directed shall upon such *presentment of such bill or bills for payment* thereof, have refused to pay such sum or sums of money in such bill or bills mentioned, and thereupon such merchant or other person to whom such bill or bills shall have been so indorsed shall have caused such bill or bills to be *protested for the non-payment* thereof; and if any other merchant or other person residing in this kingdom, to prevent such bill or bills being sent back or returned to the drawer thereof, shall, *after such second protest thereof, have accepted* such bill or bills in writing, and shall have subscribed such acceptance on the said bill or bills with his own hand; that then such merchant or other person who shall have so accepted such bill or bills, for all the time aforesaid, whereof the memory of man is not to the contrary, hath been, and still is, (2) *liable* to pay to the holder or holders of such bill or bills such sum or sums of money mentioned in such bill or bills, according to the tenor and effect of such bill or bills, and of such acceptance thereof: and the said W. C. further says, that at the several times hereafter mentioned, one W. D. and one W. P. were merchants

Indorsement.

Presentment.

Acceptance.

Refusal to accept.

Protest for want of acceptance.

Presentment for payment.

Protest for non-payment.

Acceptance (1) for the honour of drawer, after 2d protest.

Such acceptor liable, &c.

W. D drew his bill of exchange.

(1) Ann. 74. Str. 1000. Baverstock v. Titter, B. R. (2) Sittings in M. T. 24 Geo. III. Str. 817. 3. Will. 9. Burr. 1672. 1. T. R. 185. Lutw. 899. Lord Raym, 364. 12. Mod. 211. Salk. 127. Lord Raym. 574. 12. Mod. 410. Salk 129.

or other perſons reſiding, trading, and uſing commerce in parts beyond the ſeas, to wit, at New York in North America; and the ſaid W. C. and R. B. and one T. H. were at thoſe ſeveral times merchants or other perſons reſiding, trading, and uſing commerce within this kingdom, to wit, at, &c. in, &c.; and being ſo reſpectively reſiding, trading, and uſing commerce as aforeſaid, the ſaid W. D. on, &c. according to the ſaid cuſtom, in parts beyond the ſeas, to wit, at, &c. made his certain bill of exchange in writing, his own proper hand being thereunto ſubſcribed, and then and there directed the ſaid bill of exchange to the ſaid T. H. by the name of, &c. and by the ſaid bill required the ſaid T. H. at thirty days after ſight of that his ſecond bill of exchange, firſt and third of the ſame tenor and date not paid, to pay to the ſaid W. P. called in the ſaid bill by the name of, &c. or order, the ſum of thirty pounds ſterling, *advanced for the ſhip Adventure*, with or without advice from the ſaid W. D.; and the ſaid W. P. to whom, or whoſe order, the payment of the ſaid ſum of money mentioned in the ſaid bill, was by the ſaid bill to be paid, afterwards, and before the payment of the ſaid ſum of money mentioned in the ſaid bill, or any part thereof, and alſo before the time appointed by the ſaid bill for the payment thereof, to wit, on, &c. in parts beyond the ſeas, to wit, at, &c. according to the ſaid

Indorſement.

cuſtom, by the name of W. P. *indorſed* the ſaid bill, his own proper hand being thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid bill to be paid to the ſaid W. C. and afterwards, to wit, on, &c. at, &c. delivered the ſaid bill, ſo indorſed, to the ſaid W. C.; and which ſaid bill of exchange he the ſaid W. C. afterwards, to wit, on, &c. at, &c. according to the ſaid cuſtom, ſhewed and *preſented to the ſaid*

Preſented for acceptance.

T. H. for acceptance thereof, and then and there, according to the ſaid cuſtom, required the ſaid T. H. to accept the ſaid bill, according to the ſaid cuſtom; but the ſaid T. H. did not, nor would, upon ſuch ſight thereof, accept the ſame, but then and there

Refuſal to accept.

wholly refuſed to accept the ſame; and thereupon the ſaid W. C. afterwards, to wit, on, &c. at, &c. duly cauſed the ſaid bill to

Proteſted for non-acceptance.

be *duly proteſted for the non-acceptance* thereof: and the ſaid W. C. afterwards, to wit, on, &c. being the day on which the ſaid bill became due and payable, according to the ſaid cuſtom, at, &c. in, &c. *preſented* and ſhewed the ſaid bill to the ſaid T. H. for

Preſented for payment.

payment thereof, and then and there required the ſaid T. H. to pay the ſame to him the ſaid W. C. according to the tenor and effect of the ſaid bill, but that the ſaid T. H did not, nor would then pay the ſame, but then and there wholly refuſed to pay the ſame; whereupon the ſaid W. C. according to the ſaid cuſtom, afterwards, to wit, on, &c. at, &c. duly cauſed the ſaid bill to be

Proteſted for non-payment.

duly *proteſted for the non-payment* thereof; of all which premiſes the ſaid R. B. afterwards, to wit, on, &c. at, &c. had notice; and thereupon the ſaid R. B. afterwards, to wit, on, &c. at, &c. in order to *prevent the ſaid bill from being ſent back* and returned under the ſaid proteſt thereof to the ſaid W. D. and after the ſaid

two protests thereof, so made as aforesaid, accepted the said bill in writing, and subscribed the said acceptance on the said bill with his own hand, according to the said custom: and by reason of the premises, and according to the said custom, the said R. B. became liable to pay to the said W. C. who then was, and still is, the holder of the said bill, the said sum of money mentioned in the said bill, according to the tenor and effect of the said acceptance thereof; and being so liable, he the said R. B. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said W. C. to pay him the said sum of money mentioned in the said bill, according to the tenor and effect of his said acceptance thereof as aforesaid: and the said W. C. further says, that the said first and third bills mentioned in the said second bill of exchange, so accepted as aforesaid, are not yet paid, nor is either of them yet paid; and the said bill, so accepted by the said R. B. *hath not yet been sent back* or returned to the said W. D.; of all which premises the said R. B. afterwards, to wit, on, &c. at, &c. had notice: Yet the said R. B. not regarding the said custom, nor his promise and undertaking aforesaid, but contriving, &c. hath not yet paid to the said W. C. the said sum of thirty pounds or any part thereof, according to his said acceptance thereof, (although, &c.) but he, &c. and the said sum of thirty pounds mentioned in the said bill so accepted as aforesaid, is still wholly unpaid to the said W. C. to wit, at, &c.

Acceptance after two protests, to prevent bill being sent back.

Averment, that first and second not paid, and that bill hath not been sent back.

LONDON, *ss.* If Jacob Gottfield Heppius make you secure, &c. then put, &c. John Amberg, late of Hull, in the county of York, merchant, that he be before our lord the king, in fifteen days, &c. of Easter, wheresoever, &c. to shew; for that whereas, at the several times hereafter mentioned, the said Jacob Gottfield Heppius and certain persons using the name, style, and firm of Samuel Valley and Sons, and the said John Amberg and one Nul Amberg were persons respectively residing, trading, and using commerce, to wit, the said plaintiff and persons using the name, style, and firm of S. V. and Sons, in this kingdom, to wit, at London, in the parish of St. Mary le Bow, in the ward of Cheap, and the said defendant, at Hull aforesaid, and the said Nul Amberg, in parts beyond the seas, to wit, at Gefle; and being so respectively residing, trading, and using commerce, the said N. A. heretofore, to wit, on the fourth day of February, in the year of Our Lord 1788, in parts beyond the seas, to wit, at Gefle aforesaid, made his certain bill of exchange in writing, subscribed with his hand-writing, bearing date the same day and year aforesaid, according to the custom of merchants used and approved of within this kingdom from time immemorial, directed to the said defendant by the name and description of, &c. and by the said bill requested

Præcipe of Declaration by original on a foreign first bill of exchange, *First Indorsee v. Acceptor*, 2d not paid.

quested the said defendant, at ninety days after date, to pay, in London, for that his first bill of exchange (second not paid) to the order of the said persons so using the name, style, and firm of S. V. and Sons, by the name of Messrs. Samuel Valley and Sons, three hundred pounds English sterling, value received, and then and there delivered the said bill to the said persons so using the name, style, and firm of S. V. and Sons; which said bill of exchange the said defendant afterwards, and before the time appointed by the said bill for payment thereof, to wit, on the twentieth day of the said month of February, at London aforesaid, in the parish and ward aforesaid, upon sight thereof accepted, according to the said custom, to be paid at Messrs. Robert and Thomas Harrison's, bankers, London. And the said persons so using the name, style, and firm of S. V. and Sons, to whose order the said sum of money in the said bill mentioned was to be paid, after the making of the said bill, and before the payment of the said sum of money therein mentioned, or of any part thereof, and also before the time appointed by the said bill for the payment of the money therein mentioned, that is to say, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said indorsement he the said defendant afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: by reason of which said premises, and according to the said custom, and by the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said indorsement so made thereon as aforesaid; and being so liable, he the said John, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said plaintiff to pay him the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said indorsement so made thereon as aforesaid. (2d Count, money had and received the seventh of May 1788. 3d Count, money laid out. 4th Count, money lent and advanced. 5th Count, account stated.) And the said plaintiff in fact further says, that although the said second bill of exchange, alluded to and mentioned in the said bill of exchange herein before mentioned, hath not been as yet been paid or satisfied; yet, &c. (shewing the request as well at R. and J. Harrison's, bankers, London, as elsewhere at London, the seventh of May, the day the bill became payable.—Common conclusion.)

By

BY SECOND INDORSEE.

FOR that whereas one M. C. heretofore, to wit, on, &c. in parts beyond the feas, to wit, at A. in F. that is to fay, at W. in the county of Middlefex, according to the cuftom of, &c. made and drew his certain bill of exchange in writing, in the French language, bearing date, &c. upon one C. H. and one E. H. and by the faid bill then and there required them the faid C. and E. at two ufances, to pay that firft bill of exchange to the order of one G. A. in the faid bill named, fifty pounds fterling value received, which fhould be paffed without the advice of him the faid M. C. and then and there delivered the faid bill to the faid G. A. which faid bill of exchange they the faid C. and E. afterwards and before the payment of the faid fum therein fpecified, or of any part thereof, to wit, on, &c. at, &c. accepted, according to the cuftom of, &c. in that particular: and the faid G. A. to whofe order the payment of the faid fum of money in the faid bill fpecified was to be made, afterwards, and before the payment of the faid fum of money in the faid bill mentioned, or of any part thereof, to wit, on, &c. at, &c. *(*) indorfed* the faid bill according to the aforefaid cuftom, and by that *indorfement* appointed the faid fum of money in the faid bill mentioned to be paid to the faid defendants, and then and there delivered the faid bill fo *indorfed* to them the faid defendants; and the faid defendants, to whom or to whofe order the payment of the faid fum of money in the faid bill mentioned was by virtue of the faid *indorfement* fo made thereon as aforefaid, to be made afterwards, and before the payment of the faid fum of money therein mentioned, or of any part thereof, to wit, on, &c. at, &c. *indorfed* the faid bill of exchange, and by that indorfement appointed the faid fum of money in the faid bill fpecified to be paid to the faid plaintiff, and then and there delivered the faid bill, fo indorfed as aforefaid, to the faid plaintiff: and the faid plaintiff avers, that the faid two (1) ufances in the faid bill mentioned, and thereby appointed for the payment thereof, were meant and intended to be, and in fact were and are, two calendar months from the date of the faid bill, and that afterwards, to wit, on, &c. [when the faid bill became and was due and payable] at W. aforefaid, the faid bill was in due manner prefented to the faid E. and C. for payment of the money therein mentioned, and the faid E. and C. were then and there required to pay the fame to him the faid plaintiff, according to the tenor and effect of the faid bill, and the aforefaid acceptance and *indorfement* thereof; but that the faid E. and C. did not, nor did either of them, when the faid bill was fo fhewn and prefented to them as aforefaid, or at any other time whatfoever, pay the faid fum of money therein mentioned, or any part thereof, to him the faid plaintiff,

Second Indorfee v. Second Indorfer (a)

(a) 2 Show. 501. Comb. 32. Skin. 255, 256, 343, 411 3. Mod. 87. 12 Mod. 36. Ld. Raym. 181, 444, 744, Salk. 125, 132, 133. 3. Salk. 68. Str. 442, 479. 1. Atk. 282. 2. Atk. 182. Burr. 670, 675. Doug. 613.

(*) Different kinds of indorfement. Holt, 117. Ld. Raym. 176, 810. 12. Mod. 244, 192. Salk. 126, 130, 128. Ld. Raym. 44. Doug. 611, 617. Bl. 296, 299. Burr. 1227. Doug. 615. Bl. 295. Burr. 1216. Str. 557. Bull. Ni. Pri. Ed. 1790. p. 275. 12. Mod. 213. Ld. Raym. 360. Carth. 466. 3. Salk. 70. 2 Wilf. 262. Doug. 630. 1. T. Rep. 654. Salk. 126, 70. Burr. 452, 1516. Doug. 611. Tatlock & al. against Harris. 3. T. Rep. B.R. 174. 9. Mod. 44. Carthew, 5. 2. Vent. 307. Skin. 264. Doug. 630. 3. Wilf. 5. 1. Wilf. 3. 10. Mod. 246. Str. 516. 3. Wilf. 1. 2. Str. 1260. 2. Barnes, 137. 1. T. Rep. 489. Doug. 496.

(1) Salk. 131. 3. Keb. 645.

(2) Ld. Raym. 993. 6. Mod. 80. Salk. 131 3. Salk. 69. Salomons v. Stavley, B. R. M. 24. G. III. 9. & 10. W. 3. c. 17. f. 1. Str. 910. 1. T. Rep. 169. Doug. 659. 2. T. Rep. 717. 3. & 4. Ann. c. 9. f. 4. Doug. 497. Str. 217.

2d Count ftates plaintiff to be poffeffed of a banker's check given in payment of a bill of exchange by defendants, which was delivered over to them for infpection by plaintiff at their requeft; that they deftroyed it; *per quod*, and alfo by means of the drawees of fuch bill having become infolvent, plaintiff has no other remedy againft defendants.

plaintiff, but, on the contrary thereof, then and there wholly refufed fo to do, and therein wholly failed and made default; whereupon he the faid plaintiff caufed the faid bill to be (2) protefted for fuch non payment thereof, according to the cuftom of merchants in that particular, to wit, at, &c. whereof and of which faid feveral promifes the faid defendants afterwards, to wit, on, &c at, &c had notice: by reafon whereof, and of the faid feveral other premifes, and by force of the cuftom and the law of merchants, they the faid defendants became liable to pay to the faid plaintiffs the faid fum of money in the faid bill mentioned, when they fhould be thereto afterwards requefted; and being fo liable, &c. [promife of payment upon requeft.] *And whereas* the faid plaintiff afterwards, to wit, on, &c. at, &c. was lawfully poffeffed of a certain draft or order for the payment of money, commonly called a banker's check, or draft upon a banker, bearing date, &c. and then and there drawn by the faid defendants upon certain bankers carrying on bufinefs by and under the ftyle or firm of, &c. and requiring them to pay to the faid plaintiff or bearer the fum of fifty pounds, and which faid draft or order had been and was then and there drawn and given by the faid defendants to the faid plaintiffs upon a good and *bona fide* confideration, to wit, in payment of a certain bill of exchange before then drawn by one M. C. upon the faid E. and C. in favour of the faid G. A. and by him indorfed to the faid defendants, and by them indorfed over to the faid plaintiff; and thereon afterwards, and before the payment of the faid draft or order to the faid plaintiff, to wit, on, &c. at, &c. in confideration that the faid plaintiff, at the fpecial inftance and requeft of the faid defendants, would deliver to them the faid defendants the faid draft or order for the purpofe of infpection thereof, they the faid defendants undertook, &c. the faid plaintiff, to return the faid draft or order to him the faid plaintiff immediately after fuch infpection thereof: and the faid plaintiff in fact faith, that although he the faid plaintiff, confiding in the faid promife and undertaking of the faid defendants, did upon the making thereof, to wit, on, &c. at, &c. deliver to the faid defendants the aforefaid draft or order for the purpofe of fuch infpection thereof as aforefaid; and although fuch infpection thereof was then and there had and made; yet the faid defendants, not regarding the faid promife and undertaking fo by them made in this behalf as aforefaid, did not immediately after fuch infpection of the faid draft or order as aforefaid, or at any other time whatfoever, (although requefted) return the fame to the faid plaintiff, but omitted and neglected fo to do; and on the contrary thereof, afterwards, to wit, on, &c. at, &c. wrongfully, and without the leave or licence, and againft the will of the faid plaintiff, tore to pieces and deftroyed the faid draft or order; whereby he the faid plaintiff then and there, and always from thence hitherto, was and hath been hindered and prevented from obtaining payment of the faid draft or order, and of the money therein

therein mentioned, and of the said bill of exchange for which the same was so given as aforesaid; by reason whereof, and that the said E. and C. on whom such bill was drawn, are since become insolvent, the said sum of money in the said bill mentioned became and was and is altogether irrecoverably and wholly lost to him the said plaintiff other than against the said defendant, to wit, at, &c.

BY THIRD INDORSEE.

Declaration, *Executors of Third Indorsee v. Drawer*, after protests for *non-acceptance*(1) *and non-payment* of bill second of exchange, first, third, and fourth of the same tenor and date unpaid, drawn at Charlestown, North America, upon J. C. esquire, Kilboyne, county of Mayo, Ireland, at thirty days sight.

LONDON, *ss.* A. L. R. H. and J. M. *executors* of the last will and testament of P. L. deceased, complain of J. B. being, &c. for that whereas, in the lifetime of the said P. L. &c. &c. [state the bill, delivery to the payee, indorsement, according to the custom of merchants, to J. K. and by him to A. L. one of the plaintiffs, and by him to the order of the plaintiffs' testator, and delivery to him ×, notice of such indorsements to the drawee.] And the said plaintiffs, executors as aforesaid, aver, that the said bill was afterwards, in the lifetime of the said P. L. and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on, &c. at, &c. shewn and presented to the said J. C. for his acceptance thereof, and he the said J. C. was then and there requested to accept the same; and the said J. C. did not nor would then and there accept the said bill; and thereupon the said bill was afterwards, to wit, on, &c. at, &c. *protested for non-acceptance*, according to the said custom. And the said plaintiffs, executors aforesaid, further say, that at the end and expiration of the time appointed for the payment of the said bill, to wit, on the twelfth day of June in the year last aforesaid, at, &c. aforesaid, the said bill was again shewn and presented to the said J. C. for payment of the money therein mentioned, and the said J. C. was then and there requested to pay the said sum of money, in the said bill mentioned, to the said P. L. according to the tenor of the said bill, and the said several indorsements so made thereon as aforesaid; but the said J. C. did not then and there, nor at any other time, pay the said sum of money in the said bill mentioned, or any part thereof, to the said P. L. but then and there neglected and refused so to do, and therein wholly failed and made default: and thereupon the said P. L. afterwards in his lifetime, to wit, on, &c. at, &c. caused the said bill to be duly protested for non-payment thereof; of all which said several premises the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and according to the said custom and by the law of merchants, he the said defendant became liable to pay to the said P. L. [on request; and being so liable, &c. promised, &c.] And the said plaintiffs aver, that the said bill of exchange hath not been indorsed over or negociated either by the said P. L. in his lifetime, or by the said plaintiffs

plaintiffs since his death; nor have the said first, third, and fourth bills therein mentioned, or either of them, been paid or satisfied.

2d Count states Drawee *not to be found*, and protest in consequence.

And whereas, &c. [same as the first, till you have stated all the indorsements at this × mark above, then go on thus:] And the said plaintiffs, executors as aforesaid, aver, that after the making of the said several indorsements so made on the said last-mentioned bill as aforesaid, and in the lifetime of the said P. L. to wit, on the said ninth day of May in the year 1783, to wit, at, &c. aforesaid, due and diligent inquiry was made after the said J. C. on whom the said last-mentioned bill was so drawn as last aforesaid, with the intent to shew and present the said last-mentioned bill to him for his acceptance thereof, and to request him to pay the same; and at the end and expiration of thirty one days from such inquiry, further inquiry was made after the said J. C. with intent to shew and present the said last-mentioned bill to him for payment, according to the tenor and effect of the said last-mentioned bill, and the said several indorsements so made thereon as aforesaid: but the said plaintiffs in fact further say, that the said J. C. *was not upon such inquiries, or at any other time, found or to be found* by the said P. L.; nor did he pay the said sum of money in the said last-mentioned bill specified, or any part thereof, to the said P. L.: whereupon the said P. L. afterwards, in his lifetime, in due manner, and according to the said custom of merchants, caused the said last-mentioned bill to be protested, to wit, at, &c. aforesaid; whereof, and of all which said several premises, he the said defendant afterwards, in the lifetime of the said J. C. to wit, on, &c. at, &c. had notice: whereby, and by reason of which said several premises, and by force of the said custom, and by the law of merchants, he the said defendant became liable to pay [on request; and being so liable, promised to pay: like averment as to not having indorsed, and non-payment of first, third, and fourth, &c.]

3d Count on a promise by the *Drawer* to pay the contents of the bill; having been indorsed but not accepted.

And whereas, &c. [same as first and second, till you have stated all the indorsements at this × mark, then go on thus:] And the said plaintiffs, executors as aforesaid, in fact further say, that the said last-mentioned bill having been so indorsed as aforesaid, *but not as yet accepted*, although due diligence had been used for that purpose, they the said plaintiffs, as such executors as aforesaid, were, after the death of the said P. L. to wit, on the sixth day of May A. D. 1783, at, &c. aforesaid, about and were ready and willing, and then and there offered the said defendant to send over to Ireland for the purpose of shewing and presenting, or endeavouring to shew and present, the said last-mentioned bill to the said J. C. according to the tenor and direction of the said last-mentioned bill in that behalf, for acceptance and payment, according to the tenor and effect of the said last-mentioned bill, and would have accordingly presented the same;

Indorsee would have sent to Ireland, but defendant dispensed with the presentment.

but the said defendant then and there wholly *dispensed with and relinquished* the presentment of the said last-mentioned bill to the said J. C.; and, in consideration of the several premises before in this Count mentioned, undertook, and then and there faithfully promised

mised the said plaintiffs, as such executors as aforesaid, to pay to them the said sum of money in the said last-mentioned bill specified: whereby, and by reason of which said several premises, and according to the custom and law of merchants, he the said defendant became liable to pay to the said plaintiffs, as such executors as aforesaid, the said sum of money in the said last-mentioned bill specified; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. [to pay to plaintiffs: like averment as to not having indorsed, and non-payment of first, third, and fourth, &c.

Declaration by original in B. R. on a foreign bill of exchange for *foreign money*, written in *French* by *Third Indorsee* against Defendant, who accepted it, payable at Paris, at the house of a banker, stating that the bill was presented at Paris.

MIDDLESEX, to wit. S. P. late of, &c. was attached to answer A. G. and D. A. of a plea of trespass on the case; and whereupon the said plaintiffs, by A. B. their attorney, complain, that whereas, at the several times hereinafter mentioned, the said plaintiffs were partners and joint dealers in trade, to wit, at, &c.; and whereas also, at the several times hereinafter mentioned, one R. L. one P. P. B. and also two persons respectively using trade and commerce by the respective styles and firm of Chevalier and Mercier and the said plaintiffs were residing and using commerce, to wit, the said R. L. and P. P. B. and the said Chevalier and Mercier, in parts beyond the seas, to wit, at Calais, in the kingdom of France, and the said plaintiffs and defendant within this kingdom, to wit, at, &c. and being so respectively residing, trading, and using commerce as aforesaid, the said R. L. on, &c. in parts beyond the seas, to wit, at Calais, in the kingdom of France, according to the usage and custom of merchants from time immemorial used and approved of, made his certain bill of exchange in writing, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said defendant, by the name and description of, &c. and by the said bill required the said defendant, at *four usances*, to pay by that first of exchange to the order of the said P. P. B. by the description of, &c. three thousand six hundred and fifty-eight *livres*, value received of the said P. P. B. which the said defendant was to pass according to advice from the said R. L. which said bill of exchange he the said defendant afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants aforesaid, *accepted, payable at Paris, at the house of A. B. bankers*; . the said P. P B. to whose order the payment of the said sum of money mentioned in the said bill, was thereby appointed to be made, and before the payment of the said sum of money mentioned in the said bill, or of any part thereof, to wit, on, &c. at, &c. *indorsed* the said bill, his own proper hand being thereunto subscribed; and by that indorsement he the said P. P. B. then and there appointed the contents of the said bill to be paid to the order of the said Chevalier, by the description of, &c. for value received, and then and there delivered the said bill so indorsed to the said Chevalier; and the said Chevalier afterwards, (Indorsement.)

 and

and before the payment of the ſaid ſum of money mentioned in the ſaid bill, or of any part thereof, to wit, on, &c. at, &c. *indorſed* the ſaid bill, his own proper hand being thereunto ſubſcribed; and by the ſaid laſt-mentioned indorſement, he the ſaid Chevalier then and there appointed the contents of the ſaid bill to be paid to the order of Mercier, by the deſcription of, &c. for value received, and then and there delivered the ſaid bill ſo indorſed to the ſaid Mercier; and the ſaid Mercier afterwards, and before the payment of the ſaid ſum of money mentioned in the ſaid bill, or of any part thereof, to wit, on, &c. *indorſed* the ſaid bill, his own proper hand being thereto ſubſcribed; and by the ſaid laſt-mentioned indorſement, he the ſaid defendant then and there appointed the contents of the ſaid bill to be paid to the ſaid plaintiffs, and then and there delivered the ſaid bill ſo indorſed to the ſaid plaintiffs: and the ſaid plaintiffs in fact ſay, that the ſaid bill afterwards, and when the ſame became due and payable, to wit, on, &c. at, &c. was ſhewn and *preſented* at Paris, at the houſe of A. B. for the payment thereof; but the ſaid A. B. did not, nor did the ſaid defendant, then pay the ſaid ſum of money mentioned in the ſaid bill, according to the tenor and effect of the ſaid bill; of which ſaid premiſes the ſaid plaintiffs afterwards, to wit, on, &c. at, &c. gave notice to the ſaid defendant: and the ſaid plaintiffs further ſay, that the ſaid three thouſand ſix hundred and fifty-eight livres, in the ſaid bill of exchange mentioned, are, and at the time of the making of the ſaid bill were, *foreign money*, to wit, money of the kingdom of France; and at the time of making of the ſaid bill of exchange were, and from thence hitherto have been, and now are, of great value, to wit, of the value of two hundred pounds of lawful money of Great Britain, to wit, at, &c. whereof the ſaid defendant afterwards, to wit, on, &c. there had notice: by reaſon of which ſaid premiſes, and alſo by force of the uſage and cuſtom of merchants aforeſaid, he the ſaid defendant became liable to pay to the ſaid plaintiffs the ſaid ſum of money, in the ſaid bill of exchange mentioned, being of the value aforeſaid, according to the tenor and effect of the ſaid bill, and the ſaid indorſements thereon, and his ſaid acceptance thereof as aforeſaid; and being ſo liable, he the ſaid defendant, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed them, the ſaid plaintiffs, to pay them the ſaid ſum of money ſpecified in the ſaid bill of exchange, being of the value aforeſaid, according to the tenor and effect of the ſaid bill, and the ſaid indorſements thereon, and his ſaid acceptance thereof as aforeſaid.

2d Indorſement.

3d Indorſement.

Preſented.

Averment that the livres are foreign money.

And whereas alſo the ſaid R. L. on, &c. in parts beyond the ſeas, at, &c. according to the uſage, &c. made, &c. and there directed, &c. and by the ſaid laſt-mentioned, &c. and which ſaid laſt-mentioned bill of exchange he the ſaid defendant, afterwards, to wit, on, &c. at, &c. according to the uſage, &c. accepted; and the ſaid P. P. B. to whoſe order, &c. &c. (Add

2d Count ſtating that the defendant accepted, *generally*, omitting to ſtate, "that when the bill became due it was preſented for payment, and that the bankers refuſed, and that the plaintiffs gave notice thereof to the defendant."

Verification of uſance, Salk. 131: 3. Keb. 645.

the

the common Counts.) Yet, &c. to the damage of the said plaintiffs of pounds; and therefore they bring suit, &c.: *with this*, that the said plaintiffs will verify, that an *usance*, between Calais aforesaid and London aforesaid, and between Paris aforesaid and London aforesaid, is, and always hath been, thirty days, and no other time whatsoever. F. BULLER.

This declaration was demurred with causes, viz.—To the 1st Count, That the letters P. P. only are prefixed to the name of Brunet, instead of the names they are respectively meant to signify, and ought to have been inserted in words at length. To the 2d Count, that the persons called *Chevalier and Mercier*, are not identified by any christian name or names. To 3d Count, That the names of the persons called A. B. are not sufficiently set forth 4th, That it is not stated that the said bill of exchange therein mentioned to be shewn and presented at the house of A. B. for their payment thereof, was presented, or to any of them, or to the said defendant, or any servant, &c. 5th, That it is not stated that there was any refusal of payment of the said bill at the house of the said A. B. 6th, That it is not alledged that the said bill was (*a*) protested for non payment thereof; whereas by the law and custom of merchants, the said bill of exchange, being a foreign bill of exchange, ought to have been protested, and such protesting ought to have been stated in the Declaration. Judgment for plaintiff.

(*a*) There is no occasion to state the protest in a declaration on a foreign bill, so as to charge the acceptor; but a declaration is demurrable to where the protest is not stated against the drawer or indorsers.

Vide Chitty 236.7.

Declaration by *Third Indorsee* of a bill of exchange drawn at Edinburgh, against *Second Indorsee*, for non-payment by *Acceptor*; with 2d Count by Indorsees against Defendant as *Drawer*, payable to himself or order.

NEWCASTLE-UPON-TYNE, to wit. G. T. and D. R. complain again J. R being, &c for that whereas, at the several times hereafter mentioned, one A P. the younger, one J. G. the said J. R. and the said G. T. and D. R. were severally residing, trading, and using commerce, that is to say, A. J G. and the said J. R. at Edinburgh, in that part of Great Britain called Scotland, and the said G. and D. within that part of Great Britain called England, to wit, at Newcastle-upon-Tyne aforesaid; and being so residing, trading, and using commerce respectively as aforesaid, the said A. on the fifth of May 1772, at Edinburgh aforesaid, to wit, at Newcastle-upon-Tyne aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the usage and custom of merchants from time immemorial used and approved of, bearing date the same day and year aforesaid, and then and there directed the said bill to the said J G. by the name and description of Mr. J. G. merchant, Edinburgh, and by the said bill required the said J. G. nine months after date thereof, *to pay to himself the said A. or order*, at F.'s coffee-house there, to wit, at Edinburgh aforesaid, ten pounds sterling, value received; which said bill the said J. G. afterwards, and before the time appointed for payment thereof, to wit, on, &c. to wit, at Edinburgh aforesaid, to wit, at Newcastle-upon Tyne aforesaid, upon sight thereof accepted, according to the said custom; and the said A. to whom, or to whose order, the payment of the said sum of money in the said bill was to be made, afterwards, and before the payment of the said sum

 of

of money contained in the ſaid bill, or any part thereof, and alſo before the time appointed by the ſaid bill for payment thereof, to wit, on the ſame day and year aforeſaid, at Newcaſtle-upon-Tyne aforeſaid, according to the ſaid uſage and cuſtom of merchants, *indorſed* the ſaid bill, his own proper hand being thereunto ſubſcribed; and by that indorſement the ſaid A. appointed the contents of the ſaid bill to be paid to the ſaid J. R. or order, value received, and then and there delivered the ſaid bill, ſo indorſed, to the ſaid J. R.: and the ſaid J. R. to whom, or to whoſe order, the payment of the ſaid ſum of money in the ſaid bill contained was to be made, afterwards, and before the payment of the ſaid ſum of money contained in the ſaid bill, and before the time appointed by the ſaid bill for payment thereof, to wit, on the ſame day and year aforeſaid, at Newcaſtle-upon-Tyne aforeſaid, according to the ſaid uſage and cuſtom of merchants, *indorſed* the ſaid bill, his own proper hand being thereunto ſubſcribed; and by that indorſement the ſaid J. R. appointed the ſaid ſum of money in the ſaid bill contained to be paid to the ſaid G. and D. and then and there delivered the ſaid bill, ſo indorſed, to the ſaid G. and D.: and the ſaid G. and D. aver, that when the ſaid ſum of money in the ſaid bill mentioned became due and payable, according to the tenor and effect thereof, to wit, on the eighth of February 1773, they the ſaid G. and D. duly *preſented* the ſaid bill to the ſaid J. G. at the Foreſt's coffee-houſe at Edinburgh aforeſaid, for the payment thereof, according to the tenor of the ſaid bill, and then and there requeſted the ſaid J. G. to pay them the ſaid G. and D. the ſaid ſum of money therein mentioned, according to the tenor and effect of the ſaid bill, and of the ſaid acceptance thereof as aforeſaid, and the ſaid indorſements ſo made thereon as aforeſaid; but the ſaid J. G. at the time when the ſaid bill was ſo ſhewn and preſented to him as aforeſaid, or at any other time, did not pay to the ſaid G. and D. the ſaid ſum of money contained in the ſaid bill, or any part thereof, but then and there wholly refuſed ſo to do; of all which ſaid premiſes the ſaid J. R. on the ſame day and year laſt aforeſaid, at Newcaſtle-upon-Tyne aforeſaid, had notice from the ſaid G. and D.: and by reaſon of the premiſes, and according to the uſage, and by the law of merchants, the ſaid J. R. became liable to pay to the ſaid G. and D. the ſaid ſum of money in the ſaid bill of exchange contained; and being ſo liable, he the ſaid J. R. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at, &c. (aſſumpſit. 2d Count, on another bill of exchange by plaintiffs as indorſees, againſt defendant as *drawer of a bill payable to himſelf or order*, on J. T. J. T. refuſing payment thereof after acceptance. 3d Count, on another bill, ſame as laſt; common Counts).

1ſt Indorſement. 2d Indorſement. Preſented for payment.

Plea 1ſt to the above, General Iſſue.

And the ſaid J. R. by T. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid G. and D. have above

thereof

thereof complained against him; and of this he puts himself upon the country, &c. And for further plea in this behalf, the said J. R. by leave, &c. says, that the said G. and D. (*actio non*, &c.) because he says, that the several causes of action in the said declaration mentioned did not, nor did any of them, *accrue* to the said G. and D. at any time within six years next before the day of exhibiting of the bill of the said G. and D.; and of this, &c. wherefore, &c.

2d, *Actio non accrevit infra sex annos.*

W. BALDWIN.

And the said G. and D. as to the said plea of the said James by him lastly above pleaded in bar, say, that by reason, &c. (*precludi non*) because that the said J. at the time the said several causes of action in the said declaration mentioned accrued, and each of them did accrue, was in foreign parts beyond the seas, to wit, at B. in the kingdom of France, and there lived and resided until the said J. afterwards, to wit, on the fifteenth of December 1780, returned into this kingdom, to wit, at Newcastle-upon-Tyne aforesaid; and that the said G. and D. within six years next after the return of the said J. into England from beyond the seas, to wit, on the eighth of October in the twenty-first year of the reign of our lord the now king, did exhibit their said bill against the said James in due manner and form aforesaid; and this, &c. wherefore they pray judgment, and their damages, by reason of the non-performance of the said promises and undertakings to be adjudged to them, &c.

Replication to 2d plea, that after the said causes of action accrued, defendant was in foreign parts *trans mare*, until he returned in 1780; and that plaintiffs, within six years after his return, exhibited their bill.

GEO. WOOD.

And the said James says, that the said G. and D. did not, within six years next after the return of the said J. into England from beyond seas exhibit their said bill against the said J. in manner and form as the said G. and D. have above in their said replication alledged; and of this the said J. puts himself upon the country, &c.

Rejoinder, taking issue.

PLEAS before our lord the king at Westminster of the Term of St. Michael, the twenty-sixth year of the reign of our sovereign lord George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of Our Lord 1785.—Roll.

STORMONT AND WAY.

Record in an action on a bill of exchange, Executors of *Third Indorsee* against *Drawer* of a foreign bill of exchange, wherein plaintiffs obtained a verdict.

LONDON, *ss.* Be it remembered, that in the Term of the Holy Trinity last past before our lord the king at Westminster, came Alexander Leckie, Robert Hunter, and James Maude, executors of the last will and testament of Patrick Leekie deceased, by Giles Bleasdale their attorney, and brought into the court of our said lord the king then there their certain bill against John Bermingham, being in the custody of the marshal of the marshalsea of our said lord the king, before the king himself, of a plea of trespass

on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit, London, to wit. Alexander Leekie, Robert Hunter, and James Maude, executors of the last will and testament of Patrick Leekie deceased, complain of John Bermingham, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c. for that whereas the said John Bermingham, in the lifetime of the said Patrick Leekie, to wit, on the seventh day of March in the year of Our Lord 1782, in parts beyond the seas, to wit, at Charles-town in America, that is to say, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants in that respect used and approved of, made and drew this certain bill of exchange in writing, bearing date the day and year aforesaid, upon one John Chambers, and by the said bill then and there required the said John Chambers, at thirty-one days sight of that his second of exchange (first, third, and fourth of the same tenor and date unpaid) to pay one Thomas Linch, in the said bill named, or order, the sum of fifty-eight pounds three shillings and sixpence sterling, value received, and to place the same to account, with or without further advice from him the said John Bermingham, and then and there delivered the said bill to the said Thomas Linch; and the said Thomas Linch, to whom or to whose order the said sum of money in the said bill mentioned was to be paid as aforesaid, afterwards, to wit, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents of the said bill to be paid to one Isaac Kip, and then and there delivered the said bill, so indorsed, to the said Isaac; *and the* said Isaac Kip, to whom, or to whose order the said sum of money in the said bill mentioned was, by virtue of the said indorsement so made thereon as aforesaid, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents thereof to be paid to the said *Alexander*, and then and there delivered the said bill, so indorsed, to the said Alexander; *and* the said Alexander, to whom, or to whose order the said sum of money in the said bill mentioned was, by virtue of the said last mentioned indorsement, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents of the said bill to be

Bill in B. R.

Second bill of exchange made at Charles-town N. A.

Linch indorsed to Kip.

Kip indorsed to Alexander Leckie, one of the plaintiffs;

who indorsed it to the order of P. Leckie the tes-

be paid to the order of the said *Patrick* Leekie, and then and there delivered the said bill, so indorsed, to the said Patrick Leekie; *of which* said several indorsements, so made on the said bill as aforesaid, the said John Chambers then and there had notice. *And the* said Alexander, Robert, and James, executors as aforesaid, further say, that after the making of the said several indorsements, so made upon the said bill as aforesaid, to wit, on the twelfth day of March in the year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, the said Patrick Leekie died, having first duly made his last will and testament, and thereof appointed executors them the said Alexander, Robert, and James, *who* afterwards duly proved the same, and took upon themselves the execution thereof, to wit, at London aforesaid, in the parish and ward aforesaid. *And* the said Alexander, Robert, and James aver, that the said bill was afterwards, and after the death of the said Patrick Leekie, and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on the ninth day of May in the year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, shewn and presented to the said John Chambers for his acceptance thereof, and he the said John Chambers was then and there requested to accept the same; but the said John Chambers did not, nor would then and there accept the said bill; and thereupon the said bill was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, protested for non-acceptance, according to the said custom. *And* the said Alexander, Robert, and James, executors as aforesaid, further say, that at the end and expiration of the time appointed for payment of the said bill, to wit, on the twelfth day of June in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, the said bill was again shewn and presented to the said John Chambers for payment of the money therein mentioned, and he the said John Chambers was then and there required to pay the said sum of money in the said bill mentioned, to them the said Alexander, Robert, and James, as such executors as aforesaid, according to the tenor of the said bill, and the said several indorsements so thereon made as aforesaid; but the said John Chambers did not then and there, or at any other time, pay the said sum of money in the said bill mentioned, or any part thereof, to the said Alexander, Robert, and James, or to any or either of them, but then and there neglected and refused so to do, and therein wholly failed and made default; *and* thereupon the said Alexander, Robert, and James, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested for non-payment thereof; *of all* which said several premises the said John Bermingham, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: *by* reason whereof, and according to the said custom and by the law of merchants, he the said John Ber-

Of which the Drawee had notice.

And plaintiffs aver, that afterwards P. Leekie died, having made his will and appointed them executors, and they proved, &c.

Bill afterwards presented for acceptance, and protested.

Afterwards presented for payment, and protested.

Of all which defendant had notice.

By reason of which said premises, &c. he became liable;

Bermingham became liable to pay to the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, the ſaid ſum of money in the ſaid bill mentioned, when he the ſaid John Bermingham ſhould be thereto afterwards requeſted; and being liable, he the ſaid John Bermingham, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook and faithfully promiſed the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, to pay them the ſaid ſum of money in the ſaid bill ſpecified, when he the ſaid John Bermingham ſhould be thereto afterwards requeſted. *And* the ſaid Alexander, Robert, and James aver, that the ſaid bill of exchange hath not been indorſed over or negociated either by the ſaid Patrick Leckie in his lifetime, or by them the ſaid Alexander, Robert, and James, ſince his death; *nor* have the ſaid firſt, third, and fourth bills therein mentioned, or any or either of them, been paid or ſatisfied. *And whereas* the ſaid John Bermingham, in the lifetime of the ſaid Patrick Leckie, to wit, on the ſaid ſeventh day of March in the year 1782 aforeſaid, in parts beyond the ſeas, to wit, at Charles-town aforeſaid, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom, made and drew his certain other bill of exchange in writing, bearing date the day and year laſt aforeſaid, upon the ſaid John Chambers, and by the ſaid laſt mentioned bill he the ſaid John Bermingham required the ſaid John Chambers, at thirty-one days ſight of that his ſecond of exchange, (firſt, third, and fourth of the ſame tenor and date unpaid) to pay to the ſaid Thomas Linch, or order, the ſum of fifty-eight pounds three ſhillings and ſixpence ſterling, value received, and to place the ſame to account, with or without further advice from the ſaid John Bermingham, and then and there delivered the ſaid laſt mentioned bill to the ſaid Thomas Linch; and the ſaid Thomas Linch, to whom, or to whoſe order, the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified was to be paid, afterwards, in the lifetime of the ſaid Patrick Leckie, and before the payment of the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom, indorſed the ſaid laſt mentioned bill, and by that indorſement appointed the contents thereof to be paid to the ſaid Iſaac Kip, and then and there delivered the ſaid laſt mentioned bill, ſo indorſed, to the ſaid Iſaac Kip; and the ſaid Iſaac Kip, to whom, or to whoſe order, the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified was, by virtue of the ſaid indorſement, ſo made thereon as aforeſaid, to be paid, afterwards, in the lifetime of the ſaid Patrick Leckie, and before the payment of the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, indorſed the ſaid laſt mentioned bill, according to the aforeſaid cuſtom, and by

Margin notes: and aſſumpſit accordingly. — Plaintiffs aver that the bill was not indorſed by their teſtator nor by them; — Nor have the 1ſt, 3d, or 4th been paid. — 2d Count.

by that indorſement appointed the contents of the ſaid bill to be paid to the ſaid Alexander, and then and there delivered the ſaid laſt mentioned bill, ſo indorſed, to the ſaid Alexander; and the ſaid Alexander, to whom, or to whoſe order, the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified was, by virtue of the ſaid laſt mentioned indorſement, to be paid, afterwards, in the lifetime of the ſaid Patrick Leekie, and before the payment of the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, or of any part thereof to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom, indorſed the ſaid laſt mentioned bill, and by that indorſement appointed the contents of the ſaid laſt mentioned bill to be paid to the order of the ſaid Patrick Leekie, and then and there delivered the ſaid laſt mentioned bill, ſo indorſed, to the ſaid Patrick Leckie. *And* the ſaid Alexander, Robert, and James, executors as aforeſaid, aver. that after the making of the ſaid ſeveral indorſements, ſo made upon the ſaid laſt mentioned bill as aforeſaid, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, due and diligent enquiry was made after the ſaid John Chambers, on whom the ſaid laſt mentioned bill was ſo drawn as aforeſaid, with intent to ſhew and preſent the ſaid bill to him for his acceptance and payment thereof, according to the tenor and effect of the ſaid bill, and the ſaid ſeveral indorſements ſo thereon made as aforeſaid; but the ſaid Alexander, Robert, and James, in fact further ſay, that the ſaid John Chambers was not, upon ſuch enquiry, or at any other time found, or to be found; nor did he then or at any other time pay the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, or any part thereof, either to the ſaid Patrick Leckie in his lifetime, or to the ſaid Alexander, Robert, and James, executors as aforeſaid, or any or either of them, after his death; whereupon they the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, in due manner and according to the cuſtom of merchants in that reſpect uſed, cauſed the ſaid laſt mentioned bill to be proteſted for non-acceptance and non-payment thereof, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; *whereof* and of all which ſaid ſeveral premiſes he the ſaid John Bermingham there had due notice: *whereby*, and by reaſon of which ſaid ſeveral premiſes, and by force of the ſaid cuſtom and by the law of merchants, he the ſaid John Bermingham became liable to pay to the ſaid Alexander, Robert, and James, the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, when he the ſaid John Bermingham ſhould be thereto afterwards requeſted; and being ſo liable, he the ſaid John Bermingham, in conſideration thereof, afterwards, to wit, on the ſaid twelfth day of June in the year 1783 aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook and faithfully promiſed the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, to pay them the ſaid ſum of money in the ſaid laſt mentioned bill ſpecified, when he the ſaid John Bermingham ſhould

Plaintiffs aver that the Drawee was not to be found, though diligent inquiry was made to preſent the bill for acceptance and payment, nor has he accepted or paid.

Wherefore plaintiffs cauſed ſame to be proteſted, &c.

Whereof defendant had notice.

Averment as before.

ſhould be thereto afterwards requeſted. *And* the ſaid Alexandsr, Robert, and James aver, that the ſaid laſt mentioned bill of exchange hath not been indorſed over or negociated either by the ſaid Patrick Leckie in his lifetime, or by them the ſaid Alexander, Robert, and James, executors as aforeſaid, ſince his death; nor have the ſaid firſt, third, and fourth bills therein mentioned, or any or either of them, been paid or ſatisfied. *And whereas* the ſaid John Bermingham, in the lifetime of the ſaid Patrick Leekie, to wit, on the ſaid ſeventh day of March in the year 1782 aforeſaid, in foreign parts, that is to ſay, at Charles-town aforeſaid, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom, made and drew his certain other bill of exchange in writing, bearing date the day and year laſt aforeſaid, upon the ſaid John Chambers, by the name and deſcription of John Chambers eſquire, Kilboyne, county of Mayo, Ireland, and by the ſaid laſt-mentioned bill he the ſaid John Bermingham required the ſaid John Chambers, at thirty-one days ſight of that his ſecond of exchange (firſt, third, and fourth of the ſame tenor and date unpaid) to pay to the ſaid Thomas Linch or order the ſum of fifty-eight pounds three ſhillings and ſixpence ſterling, value received, and to place the ſame to account, with or without further advice from the ſaid John Bermingham, and then and there delivered the ſaid laſt-mentioned bill to the ſaid Thomas Linch; and the ſaid Thomas Linch, to whom or to whoſe order the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified was to be paid, afterwards, in the lifetime of the ſaid Patrick Leekie, and before the payment of the ſaid ſum of money in ſaid laſt-mentioned bill ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom, indorſed the ſaid laſt-mentioned bill, and by that indorſement appointed the contents thereof to be paid to the ſaid Iſaac Kip, and then and there delivered the ſaid laſt-mentioned bill ſo indorſed to the ſaid Iſaac Kip; and the ſaid Iſaac Kip, to whom or to whoſe order the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified was by virtue of the ſaid indorſement ſo made thereon as aforeſaid to be paid as aforeſaid, afterwards, in the lifetime of the ſaid Patrick Leekie, and before the payment of the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, indorſed the ſaid laſt-mentioned bill according to the aforeſaid cuſtom, and by that indorſement appointed the contents of the ſaid bill to be paid to the ſaid Alexander, and then and there delivered the ſaid laſt-mentioned bill ſo indorſed to the ſaid Alexander; and the ſaid Alexander, to whom or to whoſe order the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified was by virtue of the ſaid laſt-mentioned indorſement to be paid as aforeſaid, afterwards, in the lifetime of the ſaid Patrick Leckie, and before the payment of the ſaid ſum of money in the

3d Count, ſame as firſt and ſecond, except as below.

ſaid laſt-mentioned bill ſpecified, or of any part thereof, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid cuſtom indorſed the ſaid laſt-mentioned bill, and by that indorſement appointed the contents of the ſaid laſt-mentioned bill to be paid to the order of the ſaid Patrick Leekie, and then and there delivered the ſaid laſt-mentioned bill ſo indorſed to the ſaid Patrick Leekie. *And the ſaid* Alexander, Robert, and James, executors as aforeſaid, in fact further ſay, that the ſaid laſt-mentioned bill having been ſo indorſed as aforeſaid, but not as yet accepted, although due diligence had been uſed for that purpoſe, they the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, were after the death of the ſaid Patrick Leekie, to wit, on the ſixth day of May in the ſaid year of Our Lord 1783, at London aforeſaid, in the pariſh and ward aforeſaid, about and were ready and willing, and then and there offered the ſaid John Bermingham to ſend over to Ireland for the purpoſe of ſhewing and preſenting, or endeavouring to ſhew and preſent, the ſaid bill to the ſaid John Chambers, according to the tenor and direction of the ſaid laſt-mentioned bill in that behalf, for acceptance and payment, according to the tenor and effect of the ſaid bill, and would have accordingly preſented the ſame; but the ſaid John Bermingham then and there wholly diſpenſed with and relinquiſhed the preſentment of the ſaid laſt-mentioned bill to the ſaid John Chambers, and in conſideration of the ſeveral promiſes before in this Count mentioned, undertook, and then and there faithfully promiſed the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, to pay them the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified: whereby, and by reaſon of which ſaid ſeveral promiſes, and according to the cuſtom and law of merchants, he the ſaid John Bermingham became liable to pay to the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified; and being ſo liable, he the ſaid John Bermingham, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook and faithfully promiſed the ſaid Alexander, Robert, and James, as ſuch executors as aforeſaid, to pay them the ſaid ſum of money in the ſaid laſt-mentioned bill ſpecified. *And* the ſaid Alexander, Robert, and James, aver, that the ſaid laſt-mentioned bill of exchange hath not as yet been accepted or paid by the ſaid John Chambers, nor indorſed over or negociated either by the ſaid Patrick Leekie in his lifetime, or by them the ſaid Alexander, Robert, and James, executors as aforeſaid, ſince his death; nor have the ſaid firſt, third, and fourth bills therein mentioned, or any or either of them, been paid or ſatisfied. *And whereas* the ſaid John Bermingham, in the lifetime of the ſaid Patrick Leekie, to wit, on the ſaid ſeventh day of March in the year 1782 aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, was indebted to the ſaid Patrick Leekie in the ſum of

Averment that they were about to ſend to Ireland to preſent the bill for acceptance and payment, but defendant diſpenſed with it.

Averment as before.

4th Count, money had and received to the uſe of teſtator in his lifetime.

of one hundred pounds of lawful money of Great Britain, for money by the said John Bermingham, before that time had and received to the use of the said Patrick Leekie; and being so indebted, he the said John Bermingham, in consideration thereof, afterwards, in the lifetime of the said Patrick Leekie, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Patrick Leekie to pay him the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested.

5th Count, money had and received for the use of the executors.

And whereas the said John Bermingham afterwards, and after the death of the said Patrick Leekie, to wit, on the said twelfth day of June in the year 1783 aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Alexander, Robert, and James, as such executors as aforesaid, in other one hundred pounds of like lawful money, for money by the said John Bermingham before that time had and received to the use of the said Alexander, Robert, and James, as such executors as aforesaid; and being so indebted, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested.

6th Count, account stated with the executor.

And whereas the said John Bermingham afterwards, and after the death of the said Patrick Leekie, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, accounted with the said Alexander, Robert, and James, as such executors as aforesaid, of and concerning divers other sums of money before that time due and owing from the said John Bermingham to the said Alexander, Robert, and James, as such executors as aforesaid, and then being in arrear and unpaid, and upon that accounting he the said John Bermingham was then and there found in arrear to the said Alexander, Robert, and James, as such executors as aforesaid, in another large sum of money, to wit, in the further sum of one hundred pounds of like lawful money; and being so found in arrear, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested:

Common conclusion.

Yet the said John Bermingham, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Patrick Leekie in his lifetime, and the said Alexander, Robert, and James, executors as aforesaid, since his death, in this behalf, hath not as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, either

either to the said Patrick Leekie in his lifetime, or to the said Alexander, Robert, and James, or any or either of them since his death (although the said John Bermingham was requested, as well by the said Patrick Leekie in his lifetime, to wit, on the day and year first abovementioned, as to the said sum of money in the fourth Count mentioned, as by the said Alexander, Robert, and James, since his death, to wit, at London aforesaid, in the parish and ward aforesaid, as to all the said sums of money hereinbefore mentioned); but he to pay the same hath hitherto wholly refused, and still refuses so to do, to the damage of the said Alexander, Robert, and James, as such executors as aforesaid, of one hundred pounds, for which they bring their suit, &c. *And* they also bring into court here the letters testamentary of the said Patrick Leekie, whereby it appears to the said Court here, that they are executors of his last will and testament, and have executed administration thereof, &c.

Profert of the letters testamentary.

And now at this day, that is to say, on Monday next after the morrow of All Souls in this same Term, until which day the said John Bermingham had leave to imparl to the said bill, and then to answer the same, &c. come as well the said Alexander, Robert, and James, by their said attorney, as the said John Bermingham by Thomas Alexander Pickering his attorney, before our lord the king at Westminster; and the said John Bermingham defends the wrong and injury, when, &c. and says, that he did not undertake or promise in manner and form as the said Alexander, Robert, and James, as executors as aforesaid, have above thereof complained against him; and of this he puts himself upon the country, &c. *Afterward*, and before this day, to wit, on the ninth day of November, in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said Alexander and Robert suggest to the Court here, according to the form of the statute in such case made and provided, that the said James Maude died, and the said Alexander and Robert have survived him, *which* the said John Bermingham doth not deny: *And as* to the said plea of the said John Bermingham, and of which he hath put himself upon the country, they the said Alexander and Robert do the like, &c. therefore let a jury come thereupon before our lord the king at Westminster on Monday next after fifteen days of St. Martin, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties at the same place, &c.

Plea.

General Issue.

Suggestion of the death of one of the plaintiffs

Similiter by the survivors.

Before our lord the king at Westminster, of the Term of St. Hilary, in the twenty-sixth year of the reign of our sovereign lord George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of Our Lord 1786.

Pleas.

London,

Respite of jurors.

London, to wit. The jury between Alexander Leekie and Robert Hunter, surviving executors of the last will and testament of Patrick Leekie deceased, by Giles Bleadle their attorney, plaintiffs, and John Bermingham, defendant, of a plea of trespass on the case, is respited before our lord the king at Westminster, until on Wednesday next after fifteen days from the day of Easter, *unless* the honourable Francis Buller esquire, one of the justices of our lord the king assigned to hold pleas before the king himself, shall first come on Wednesday the fifteenth day of February, at the Guildhall of the said city, according to the form of the statute in such case made and provided, &c. for default of the jurors, because none of them did appear; therefore let the sheriff have the bodies of the said jurors to make the said jury between the parties aforesaid of the plea aforesaid accordingly: the same day is given to the parties aforesaid at the same place.

Postea, in an action of assumpsit, one issue for plaintiff, the other for defendant.

Afterwards, that is to say, on the day and at the place within mentioned, before the honourable Francis Buller esquire, the justice within mentioned, John Way gentleman being associated unto him, according to the form of the statute in such case made and provided, come as well the within named Alexander Leekie and Robert Hunter, surviving executors as aforesaid, as the within named John Bermingham, by their respective attornies within mentioned, and the jurors of the jury whereof mention is within made, being called, likewise come; who being tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that the said John Bermingham did not undertake or promise in manner and form as in the said *third Count* of the within declaration is complained against him: *but* the said jurors also say, upon their said oath, that the said John Bermingham did undertake and promise in manner and form as in the said several other Counts of the said declaration is complained against him; and they assess the damages of the said Alexander Leekie and Robert Hunter as such surviving executors as aforesaid, on occasion of the promises in those Counts mentioned, to fifty-eight pounds three shillings and sixpence, over and above their costs and charges by them laid out about their suit in this behalf, and for those costs and charges to forty shillings; therefore, &c.

Non assumpsit to third count.

Assumpsit as to the others.

FIFTH INDORSEE.

Fifth Indorsee v. *Acceptor* of a *foreign* bill *called his first of exchange*, payable to the order of third persons, who are *partners*; with averment, that plaintiff hath not indorsed the bill. Vide Starkie and Chusman, Carth. 509.

MIDDLESEX, *ss.* For that whereas, at the several times hereafter mentioned, the said W. T. F. M. J. G. H. L. Pasquire, J. D. F. A. Z. and M. Breton, were persons residing, trading, and using commerce, to wit, the said J. G. H. in parts beyond the seas, to wit, at A. in Holland, and the said W. T. F. M. L. P. J. D. F. A. Z. and M. Breton, within this kingdom, to wit, at Westminster, in the county of Middlesex; and

whereas

whereas alſo, before and at the ſeveral times hereafter mentioned, the ſaid L. P. &c. and J. D. were partners and joint dealers together in their ſaid trade and commerce, and the ſaid W. T. L. P. J. D. F. M. J. G. H. F. A. Z. and M. Breton, being ſo reſpectively reſident and trading as aforeſaid, and the ſaid L. Paſquire, &c. and J. D. being partners as aforeſaid, the ſaid J. G. H. heretofore, to wit, on the fifteenth day of December A. D. 1761, in parts beyond the ſeas, to wit, at A. in Holland aforeſaid, that is to ſay, at, &c. in the county of Middleſex, made his certain bill of exchange in writing, ſubſcribed with his own proper hand, according to the cuſtom of merchants from time immemorial uſed and approved of; and the ſaid bill, bearing date the day and year aforeſaid, directed to the ſaid F. M. by the name of, &c. and by the ſaid bill required him, thirty days after date, to pay that (*b*) *firſt of exchange* to (*c*) *the order of ſaid* L. P. and J. D. by the name of Meſſrs. P. Son, and Co. the ſum of one thouſand and eighty-one pounds Dutch currency, at the courſe of exchange of the day, value received from him the ſaid J. G. H. which he the ſaid Fell would place to the account of him the ſaid J. G. H. according to advice; which ſaid bill of exchange the ſaid F. M. afterwards, and before the payment of the money therein ſpecified, or of any part thereof, and alſo before the time appointed by the ſaid bill for the payment thereof, to wit, on the day and year aforeſaid, at W. aforeſaid, upon ſight thereof accepted, according to the ſaid cuſtom; and the ſaid L. P. to the order of whom and of the ſaid J. D. P. his partners, the payment of the ſaid ſum of money contained in the ſaid bill was to be made, afterwards, and before the payment of the ſaid ſum of money contained in the ſaid bill, or of any part thereof, (2) *and alſo before the time appointed by the ſaid bill for the payment thereof, to wit*, on the twenty-fourth day of December in the year aforeſaid, indorſed the ſaid bill, his own proper hand being thereto ſubſcribed; and by that indorſement, for himſelf and partners, appointed the contents of the ſaid bill to be paid to the order of the ſaid F. A. Z. and then and there delivered the ſaid bill, ſo indorſed, to the ſaid F. A. Z. and the ſaid F. A. Z. to the order of whom the payment, &c. (Then ſtate the other indorſements, till you have brought the bill into the hands of plaintiff, then aver as follows.) And the ſaid plaintiff (*d*) *avers*, that he did not, at any time ſince the making of the ſaid indorſement of the ſaid bill to him as aforeſaid, indorſe, nor hath he at any time hitherto indorſed over the ſaid bill, nor accepted the contents thereof, to be paid to any perſon whatſoever; and that the ſaid defendants afterwards, to wit, on the day and year laſt aforeſaid, at, &c. had notice of the ſaid ſeveral indorſe-

(2) This is unneceſſary, and ſometimes dangerous, 1. Lord Raym. 575.

(*b*) In an action on a ſecond bill of exchange not neceſſary to aver that the firſt and third were not paid. See Carth. 510.

(*c*) That the bill ſet out in the declaration is a bill of exchange, vide 1. Salk. 130. and 10. Mod. 286.

(*d*) This averment is warranted by Bull. Ni. Pri 273. and is indeed generally inſerted, though it ſhould not ſeem to be abſolutely neceſſary. 10. Mod. 286. 1. Salk. 130.

ments

ments so made on the said bill as aforesaid; by reason, &c. (State liability, and assumpsit to pay, according to tenor and effect of bill, &c.)

CASES, WITH MR. BEARCROFT'S AND MR. SERJEANT ADAIR'S OPINIONS.

In an action by *Indorsee* against *Acceptor*, after acceptance he must prove the first indorsement.

MESSRS. Hammond and Whitlock are the agents acting on the behalf of a ship in the Baltic trade, of which Mr. Henry Cammell is the master, and who sometimes draws bills on them for small sums of money on account of the ship . There is now in the hands of Mr. Smith, a salesman of wearing apparel in Houndsditch, a bill drawn in the name of Captain Cammel on Messrs. Hammond and Whitlock for twenty pounds, in favour of one Mr. William Green, and accepted by Mr. Hammond, which bill is in the following words and figures:

£. 20.

Cronstadt, August 9, 1786.

Two months after date, please to pay to Mr. William Green, or order, the sum of twenty pounds for value received, and place the same to the account of your humble servant,

Henry Cammell, at Sir James Esdaile and Co.
William Hammond.

To Messrs. Hammond and Whitlock, No. 17, *Crutched Friars, London.*

Indorsed William Green.
Thomas Hudson.
James Mills.

When the above bill was tendered to Mr, Smith, he sent it to the banker's, directed by the acceptance, to know if it was a good bill, and was there answered that it was.

(3) See Devallar v. Hening, 9 Mod. 44. and Bailey on Bills, &c. p. 15.

Before this bill became due, it was discovered by Messrs. Hammond and Whitlock that it had been (3) *forged* with another bill for one hundred pounds, by a man of the name of A. B. who was taken into custody by them, and confined in Yarmouth gaol, from whence he lately made his escape into Holland. The name Henry Cammell put as the drawer is *not* of the hand-writing of Captain Cammell, although an imitation of it; and there *is no such person as William Green*, the person appearing to be the payee, and the indorsement of his name is supposed to be made by the forger of the bill. The names of the indorsers, Hudson and Mills, are also *fictitious names*, to give the bill a mercantile appearance. When the bill became due, it was presented for payment by Mr. Smith (who is said to have received it from the person committing the forgery in payment for a quantity of wearing apparel purchased of him); but Mr. H. was advised that he was not compelled by law to pay it, by reason that the *indorsement of Green the payee could not be proved, there being no such person in existence.* On Mr. H.'s part it was contended, that even supposing he could not avail himself of the forgery of the drawer's name, so as to avoid payment of the bill, yet the acceptance amounted only to an engagement to pay the money to Mr. Green *or order*; and no interest could be transferred to any other person but by the real and actual indorsement of William Green, which could not happen

pen in this case, he being a fictitious person; but here there is no order by William Green for transferring the right of action to Mr. Smith the holder of the bill, insomuch as there is no real indorsement thereon; and therefore that he cannot put himself into a situation capable of recovering the money. On the other hand Mr. Smith contends, that he received the bill fairly, and in the usual course of trade, and took the usual precautions against forgeries, and that Mr. Hammond the acceptor cannot take the advantage of his inability to prove the hand-writing of William Green the first indorser, but must pay the money. To save expence it is agreed, that both parties shall be governed by your opinion, Whether, under all the circumstances before stated, Mr. Hammond, as the acceptor of the bill in question, can be compelled by law to pay the amount to Mr. Smith?

I Am clearly of opinion that, in the case stated, Mr. Hammond, the acceptor of this bill, cannot be compelled by law to pay the amount. His acceptance admits the hand of the drawer, but nothing more; the indorsee must derive his title through the original payee and first indorser, which cannot be done here since none such exists. Smith and Hammond are both equally innocent; therefore the loss must rest, as between them, where it now stands, which, under the circumstances stated, is upon Smith.

EDW. BEARCROFT.

CASE.

FIRST, A. a merchant resident in foreign parts, draws a bill at three months sight on B. and payable to C. both resident in London. The said bill is accepted by B. and delivered over to C. whose property it is. C. afterwards gives the said bill in trust to B. who, while it is in his possession, secretes himself from his creditors, and afterwards becomes a bankrupt; but prior to the docket being struck against B. C. goes to B. and claims the bill as his property, which B. immediately delivers up to him.

Question.—Whether the said bill is actually the property of C. at the time above mentioned, although then in the possession of B. but in trust? Or whether it becomes a part of the estate of B. to which his creditors have a legal claim to their dividend upon? Or, if the creditors can have no just claim, whether, on C. paying the said bill away to D. its being regularly presented when due to B. for payment, and being noted for non-payment, has not D. a just right to protest the bill and return it back to A. who is the drawer, and to use coercive measures to enforce the payment?

The *nature of the trust* upon which the bill was put into the hands of B. the acceptor, is not stated; [illegible] held it *merely in trust*, and without any claim of beneficial interest in it, I am of opinion that it remains the property of C. and that the creditors of B. have no claim whatever upon it. On the contrary, it may be proved as a debt under the commission, and C. would be entitled to a [illegible] dividend with the [illegible] creditors. The holder of the bill should present it for payment to B. when due, and have it regularly protested, after which he will have a clear right to recover the amount against A. the drawer.

SECOND, C. has accepted two bills to the amount of five hundred pounds and upwards, for which he never received the least value for doing the same, merely out of friendship to B. to serve his credit until his remittances came round. B. takes the said bills to D. (a banker) in order to get them discounted, which D. refuses, but agrees to advance one hundred and fifty pounds to B. on account of them. Soon after which B. commits an act of bankruptcy by secreting himself; but before the docket is struck against B. C. applies to D. to enquire of him what sum was lent to B. on account of the bills; and upon being informed, C. tells D. he wishes to pay him the one hundred and fifty pounds B. has had advanced him upon the bills, if he will deliver them up to him on his so doing.

Question—Will D. be safe in delivering up the bills in question to C. or whether it will be requisite for B. to appear with C. at the house of D. and there to personally deliver the bills over to C. as his property in the presence of D. who might then pay D. the one hundred and fifty pounds he had advanced thereon? Or what other mode can be devised in order to secure C. and D. from farther trouble?

This point, though the justice of the case is perfectly clear, is attended with some difficulty, [illegible] doubtful whether D. having full notice of the bankruptcy can deliver [illegible] bills in question to C. or even to B. himself, without being subject to an action of trover from the assignees of B. if they should *tender the one hundred and fifty pounds*, and *demand the bills*; for though I am of opinion that B. or his assignees could not recover either in law or equity the amount of these bills against C. if it can be clearly proved that they were accepted merely for accommodation, and without any valuable consideration, yet I doubt whether D. can take upon himself to decide between them, and he would certainly do it at his own risk. If the bills are over due, then I think C. need have no apprehension, from their falling into the hands of the assignees. But if the bills are not yet due, and the assignees getting the possession of them from the banker (which, on tender of the one hundred and fifty pounds, I think he could not refuse) [illegible] dishonest enough to pay them away for a valuable consideration to persons who had no notice of their being mere accommodation bills, C. could then make no defence against such holders of the bills.

If the assignees are fair men, I should think, on being informed of the true circumstances of the case, they would consent to the delivery of the bills to C. But if they will not, I think the most secure way for all the parties will be, for C. to file a bill of equity against *B. D. and the assignees of B.* praying that the bills may be delivered up, on payment of the sum of one hundred and fifty pounds due to D. and that he C. may come in as a creditor to that amount upon the estate of B. which I should think might be done at no very large expence, as a very short bill would be sufficient. But if there is no apprehension of the assignees getting possession of the bills and *paying them away before due*, it will be most prudent for C. to lie by, as I am clearly of opinion, that the amount of the bills can never be recovered against him by any person who has notice that they were accepted without consideration.

J. ADAIR.

[illegible]

ON PROMISSORY NOTES.

MIDDLESEX, *ss.* A. B. complains of C. D. being, &c. in plea of trespass on the case, &c. for that whereas the said defendant

fendant heretofore, to wit, on *(a)* the feventh *(b)* day of October, A. D. 1790, to wit, at *(c)* Weftminfter, in the faid county of Middlefex, made and *figned* *(d)* his certain note in writing, commonly called a promiffory note, *bearing date the day and year aforefaid* *(e)*, and (1) *thereby* promifed *(f)* to pay to the faid plaintiff, by the name of Mr. A. B. or order, four months after the date of the faid note, the fum of ten pounds ten fhillings for value received by him the faid defendant, and then and there *delivered* *(g)* the faid note to the faid plaintiff; whereby, and by reafon of which faid feveral premifes, and by force of the ftatute in fuch cafe made and provided, the faid defendant became liable to pay to the faid plaintiff the faid fum of money in the faid note fpecified, *according to the tenor and effect of the faid note* *(h)*; and being fo liable, he the faid defendant, in confideration thereof, afterwards, to wit, on the fame day and year aforefaid, at *(i)* Weftminfter

(1) Burr. 325.

(a) It was formerly the practice (and indeed we now frequently meet with it) to alledge the note to be made *after the firft day of May* 1705 (the day mentioned in ftatute 3. and 4. Anne, c. 9. which gives the action on promiffory notes); but as the note itfelf appears to be made fubfequent to it, there is no neceffity to take notice of it; though it may be otherwife in cafes where the day fet forth is material. In that cafe, as the ftatute fpeaks of a thing as arifing after a particular day, fo it fhould be otherwife fhewn than under a *fcilicet*, or by an allegation that is not material. In fhort, it fhould be pofitively alledged to have fo happened, in order to bring the cafe within the ftatute.

(b) *The day* is *material* in this cafe, as it defines the contract on which the action is brought. 1. Stra. 22.

(c) *The place* is *not material* in an action upon an *inland* note, nor do I conceive it to be fo in the cafe of a *foreign* one; though it is otherwife with bills of exchange, which are governed by local cuftoms as well as pofitive ftatutes: yet it is ufual, where a note is made abroad, and it appears upon the face of it, to alledge it to have been made in parts beyond the feas, that is to fay, at *Jamaica, in the Weft Indies*, to wit, at Weftminfter (the ufual venue).

(d) This is the word made ufe of in the ftatute of Anne; and it feems to have the preference of the ufual word *fubfcribed*, inafmuch as it is equally applicable to a fignature by a mark as to a written one. According to one decifion (2. Lord Raym. 1484.), however, neither one expreffion nor the other is abfolutely neceffary, both being included in the word *made*. Vide alfo 2. Lord Raym. 1377. and 1542. Str. 609.

(e) If the note have no date, you will omit this allegation of courfe. 2. Show. 442.

(f) Be careful to recite the note accurately, as a variance will be fatal. You need not, however, recite it literally, as in the cafe of bad fpelling and fuch like inaccuracies.

(g) This feems to be a material allegation, as the bare making of a note, without *delivering* it, feems of no avail; yet the want of the averment may be merely an informality, and of courfe the fubject of a fpecial demurrer, and incapable of being taken advantage of in any other way. It alfo feems to be more formal to ftate the *delivery* of the note *after* the recital of it than *before*, and then go on and fay, that by reafon of the feveral premifes (of which the *delivery* is one) and by force of the ftatute, &c. the defendant became liable.

(h) This will ever be the cafe where the action is between the *original parties* to the note; but where it is brought againft an *indorfer* or other *collateral* party, in confequence of the drawer's default at the end of the time appointed for payment of the note, there the obligation of payment on fuch indorfer or third perfon is *immediate and direct*, or, in legal language, *upon requeft*, and not *according to the tenor of*, or in any manner dependent upon, the note or inftrument.

(i) As the promife is a tranfitory matter, we make no difference in the *place here*, though the note be a *foreign* one. In the beginning of the declaration, the place where the note was really made is fet out as defcriptive of the inftrument, but here it is only applied to the promife, which, being tranfitory, requires no fpecific defcription.

aforesaid, (*k*) *undertook, and faithfully promised* the said plaintiff, to pay him the said sum of money in the said note specified (*l*), *according to the tenor and effect of the said note.* And whereas, &c. (It is usual to add a Count for money had and received, of which a note has been deemed (2) evidence; but as it seems to be better evidence of an *account stated*, make a rule of inserting such a Count: and by way of caution, when the action is between the original parties, it is prudent to add Counts upon the *consideration* (3) of the note, lest the plaintiff should not be able to establish the drawer's hand-writing.)

(2) 12. Mod. 380. Grant *v.* Vaughan, Burr. 1516.

(3) B. R. E. 18. Geo. 3. Peckham *v.* Wood, Bl. 445. Bailey on Bills and Notes, 48. 17. Morrison *v* Lee, B. R. H. 26. Geo. III. Com. 43. 1 T. R. 40. 2. T. R. 71. Atk. 182. Bull. Ni. Pri. ed. 1790, 274. Str. 1155. Doug. 708. Consideration illegal, Burr. 1077. 5. Geo. II. 30. s. 11. 9 Ann. c. 14 s. 1. 12. Ann. st. 2. c. 16. Anon. B. R. H. 26. Geo. III. But an action will lie for the money lent (see Bailey on Bills and Notes, 70.) though the consideration may be money lent and lost at play.

(*k*) As this assumpsit is merely an assumpsit by implication of law, out of the preceding matter, which is an *express* assumpsit in itself, so the want of it may be immaterial *after a verdict*, though perhaps bad, upon a *special demurrer*. It is so in the case of bills of exchange (Carth. 510. Lord Raym. 574. 1. Salk. 129.); and of course is so in that of promissory notes, which are clearly express promises in themselves. And in the case of Gregory *v.* Walcup, it was held, that in an action against the *acceptor* of a bill of exchange, it was not necessary to alledge a promise of payment, as the acceptance is an actual assumption, and the declaration need not alledge more. Comyns's Rep. 75. pl. 49.

(*l*) The assumpsit must of course be governed by the same rules as the obligation that raised it, and of consequence must be co extensive and commensurate with it. Bailey on Bills and Notes, 62. Str. 224.

Assumpsit against the *Executor* of a Maker, &c.

FOR that whereas the said *W. Layton* (defendant's testator) in his life-time, to wit, on the twenty-third day of August, A. D. 1785, at Westminster, in the county aforesaid, made and signed his certain note in writing, commonly called, &c. bearing date, &c. and thereby promised to pay to the said, &c. by the name of, &c. [see last Precedent], and then and there delivered, &c.; whereby, and by reason of which several premises, and by force of the statute, &c. the said W. L. *in his lifetime* became liable to pay, &c. according, &c.; and being so liable, he the said W. L. in consideration thereof, afterwards, in his lifetime, to wit, on, &c. at, &c. undertook, &c. And whereas the said W. Layton afterwards, *in his lifetime*, to wit, on, &c. (same day after the note became due, so as it be before the death of defendant's testator.) (Add the Counts spoken of at the end of the preceding Precedent, with the following conclusion.) Yet the said *W. Layton* (defendant's testator) *in his lifetime*, and the said defendant after his death, not regarding the said several promises and undertakings of the said *W. Layton*, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not, nor hath either of them, paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said plaintiff, although so

Common conclusion in assumpsit to a declaration against an executor of maker of a promissory

to do the said *William Layton* in his *lifetime*, to wit, on the day and year last aforesaid, and often afterwards, and the said defendant *after the death* of the said W. Layton, to wit, on the day of , A. D. , (any day after the death of defendant's testator, and before the bringing of the action) and often both before and afterwards, were respectively requested by the said plaintiff, to wit, at, &c. aforesaid, in the county aforesaid; but they, or either of them, to pay the same, or any part thereof, have, and each of them hath, wholly refused and neglected, and the said defendant still refuses to pay the same to the said plaintiff, to the damage of him the said plaintiff of fifty pounds; and therefore he brings his suit, &c.

Executor of Payee against the Maker.

FOR that whereas the said defendant, in the lifetime of the said *A* (plaintiff's testator), to wit, on, &c. made, &c. (as in the last Precedent, only substituting the *plaintiff's* testator for *defendant's*); and whereas the said defendant afterwards, in the lifetime of the said *A.* (plaintiff's testator), to wit, on, &c. (any day after the note became due, so as it be in the lifetime of plaintiff's testator), [the same Counts as in the last Precedent, with the following conclusion.] Yet the said defendant, not regarding, &c. but contriving, &c. craftily and subtilly to deceive, &c. the said *A.* (plaintiff's testator) *in his lifetime*, and the said plaintiff, *executor* as aforesaid, *since his death*, hath not paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, either to the said *A.* (plaintiff's testator) in his lifetime, or to the said plaintiff since his death, although so to do he the said defendant was requested by the said *A.* (plaintiff's testator) *in his lifetime*, to wit, on the day and year last aforesaid, and often afterwards, and by the said plaintiff as such *executor* as aforesaid *since the death* of the said *A.* (plaintiff's testator), to wit, on, &c. (any day after death of plaintiff's testator, and before bringing the action), and often both before and afterwards, to wit, at, &c. aforesaid; but he to pay the same, or any part thereof, hath always hitherto wholly refused and neglected, and he doth still refuse, to pay the same to the said plaintiff as such *executor* as aforesaid, to the damage of the said plaintiff, as such executor as aforesaid, of pounds; and therefore he brings his suit, &c.: and he also brings into court here the letters testamentary of the said *A.* (plaintiff's testator), whereby it fully appears that the said plaintiff is executor of the last will and testament of the said *A.* and hath administration thereof, &c.

Common conclusion to a declaration in assumpsit at suit of an Executor.

Payees, partners, against *Makers, partners,* upon a note made by one of them, with directions as to declaration on note made by both.

FOR that whereas the said *J.* and *T.* (the defendants and makers), at the several and respective times, hereafter mentioned,

were *(a) partners* and joint dealers together in trade and commerce, to wit, at, &c. in, &c. and the said J. and T. being such partners and joint dealers together, the said J. on, &c. at, &c. aforesaid, *for (b) himself and the said T. his partner*, made and signed *a (c) certain note* in writing, commonly called, &c. bearing date, &c. and thereby, *for (b) himself and his said partner, promised* to pay to the said W. and M. or their order, &c. &c. and then and there, *for (b) himself and his aforesaid partner, delivered*, the said note, &c.; whereby, and by reason of which said several premises, and by force of the statute, the said J. and T. became liable to pay, &c.; and being so liable, they the said J. and T. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c.

(a) Where the note (like that in question) is given by one partner only for himself and his companion, there it seems proper to state a partnership, as in the precedent before us, in order to render it obligatory on the non subscribing partner. But where it is signed by all the partners in a house, or by all who are intended to be bound by it, it may be unnecessary to state anything like a general partnership in the course of trade, as, whether it exist or not, the parties are bound by their signature, independent of any other circumstance. So, for a similar reason, it may be unnecessary to state a partnership in the *Payees*, where a note is payable to them all by name; but where it is payable to only *one* of them *and Co.* there it perhaps may be necessary to aver the fact of a partnership, as it is from that circumstance coupled with the note or contract, and not from the note simply, that any but he who is immediately named derives any interest in the instrument.

(b) This and the similar allegations are *material*. Vide Lord Raym. 1484.

(c) As the note in question is neither the contract of one alone, nor the immediate act of both the drawers, so it seems better to describe it as *a* note generally, than as the specific act or contract of either one or both of the parties to be bound by it.

Payee against *one Maker (b)*, upon a *joint* and *several* note,
* "his."

FOR that whereas the said defendant *and one J. B. (a)*, on, &c. at, &c. made and signed *their* * certain note in writing, commonly called, &c. bearing date, &c. and thereby *jointly and severally* promised to pay, &c. and then and there delivered, &c.; whereby, &c. the said defendant became liable, &c.; and being so liable, he the said defendant, in consideration, &c. (Assumpsit accordingly.) And whereas, &c. (Add another Count as upon a note by defendant alone, &c. by leaving out what is in italic, and inserting the word in the margin.)

(a) If three make a note (a) *jointly* and *severally*, you may not declare against *two* of them jointly, the third living, but you may against all three jointly, or against *each* of them *separately*: so determined by Lord Mansfield, in the case of Turnbull, at Sittings Guildhall, about the year 1777. [redacted]

(b) This is the usual way of declaring on a *joint* and *several* note, though we seldom use more than the *second* Count, which is sufficient, and indeed seems the better Count of the two, as the plaintiff will have less to prove under it, having the subscription of *one* of the drawers only to establish, instead of that of *both*; and when the note is in the *disjunctive*, it is the proper Count, as appears from the following cases: Ovington and Neale, Stra. 819. and Lord Raym. 1544. On error, in B. R. a judgment in favour of plaintiff was reversed for want of the plaintiff's shewing a title to bring a *separate* action against one of the makers of a note, by two *conjunctim aut separatim*; for by the present declaration he only says,

(a) Cowp. 832. Burr. 2614. Burr. 323.

he has this or some other cause of action, and the note does not import they promised severally; for the note set out is, that they promised jointly or severally, which is not positive that they promised severally, for it ought to have been, that they promised jointly and severally. In Stra. 76. Butler and Malissy, on a similar note as in the preceding case, on demurrer, it was insisted for defendant, that the action should have been brought against *both*. Et per *Parker, C. J.* The plaintiff might have brought it against *either* or *both*, for he had his election: if the action had been against both, he should have declared as he now does; but that is not right in the action against one only, for he should have declared generally, that this defendant, by *his* note, promised to pay; and a several note by two would have been good evidence. Suppose the note had been for fifty pounds or one hundred pounds, the plaintiff is entitled to either, but uncertain which till he has made his election; for he that speaks in the *disjunctive*, says true, if *either member* of the disjunctive be verified (*b*); whereas he who speaks in the affirmative affirms *both* parts to be true. In the case of Rees and Abbot, Cowp. 832. (*c*), the court of B. R. held, that *jointly* OR *severally*, and *jointly* AND *severally*, were synonymous, and that the election whether the note shall be joint or several is in the person to whom it is payable.

(*b*) Bailey on Bills and Notes, 56. (*c*) Str. 76.

Payee against Goldsmith or Banker, &c. on a note drawn by his (1) Clerk or Servant.

FOR that whereas the said defendant, before and at the time of the making of the note hereinafter mentioned, and afterwards, *was a goldsmith* (*a*), and a trader in that business, and one R. W. was, for and during all that time, a (1) *servant* of the said defendant in his said business, and usually entrusted by him to sign such notes, to wit, at, &c. aforesaid; and the said defendant being such goldsmith and trader as aforesaid, and the said R. W. being such servant to him as aforesaid, and so entrusted as aforesaid, he the said R. W. on, &c. at, &c. as such servant of the said defendant as aforesaid, and for him the said defendant made and signed a certain note in writing, commonly called, &c. bearing date, &c. and thereby as such servant of the said defendant as aforesaid, and for him the said defendant, promised to pay, &c.; and then and there, as such servant to the said defendant as aforesaid, and for him the said defendant, delivered, &c.; whereof (*b*) the said defendant afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, had notice: whereby, and by reason, &c. and by force of the statute,

(1) Lord Raym. 175, 1484. Doug. 630. 12. Mod. 564. Comb. 450. 12. Mod 346. Mod. 110.

(*a*) As the notes of these sort of traders are generally made by their *clerks*, so the Legislature has had an eye to them in particular, as well as to notes made by the persons who are to pay them; and it is upon this ground that the declaration is varied from one upon a note made by the *servant of a person not a trader*; the unusual averments arise out of the stat. (a) which *vide*.

(*b*) In the old declarations on notes like that in question, there is an averment of the note's being presented for payment; but as there can be no more necessity for an averment of that kind here than in the case of an ordinary note, so it may be omitted; and indeed it is imprudent to have it in, lest it should burthen plaintiff with proof. Yet as the note is not the immediate act of the person who is to pay it, so it is perhaps necessary to bring the facts within his knowledge by the common averment of his having notice of them. This answers all the end of the averment of the note's being presented, and being an averment of a fact, not springing from plaintiff himself, but deducible from all the circumstances of the case, may be taken by presumption from those circumstances, without burthening the plaintiff with any positive evidence of the fact itself.

(a) 3. and 4. Ann. c. 9.

tute, &c. the said defendant became liable, &c. and being so liable, &c. he the said defendant, in consideration, &c. undertook, &c. (*c*)

(*c*) It seems usual to add a Count upon a note as made by defendant himself; but it is difficult to conceive either the necessity or utility of such a Count; and indeed it should seem improper, as notes like the one in question seem to stand upon their own circumstances, and to be treated of in the statute as distinct from notes made by the party who is to be charged by them: however, it may be inserted out of caution, lest the custom should be inaccurately stated.

Besides the difference between this declaration and the ancient form in the respect alluded to in the preceding note (*b*), it varies from it in this: According to the ancient form, the action seems founded on a case rather than an act of parliament, as the case really is, (vide the next Precedent). That such a custom is good, and does in fact exist, is undeniable; but whether it does or does not seems perfectly immaterial, as the stat. of Anne expressly gives an action upon the note independent of any custom whatsoever; of course therefore it follows, that nothing more be stated than the facts of defendant's being *one of the traders* mentioned in the act, and that the drawer of the note was a *servant* of the description there spoken of. How the declaring upon a custom first obtained, is rather difficult to determine; but from all we can collect, it is likely to be as follows: Before the stat. of Anne, when no action could be maintained upon the note itself, as such merchants and pleaders used every endeavour to put them upon the same footing as bills of exchange; with the former they were always considered as such, and the latter attempted to declare upon them accordingly, and, in analogy to declarations upon bills, had recourse to the custom of merchants in their pleadings; but this was soon over-ruled, as will be seen on bills of exchange, and the stat. of Anne made to remedy the inconvenience. The practice of declaring upon them as under a custom, however, having once obtained, it is probable that it continued even after the statute: and this idea seems confirmed in the circumstance of no notice being taken of the statute in the *old declarations*; nor indeed does it appear by those declarations, but the cause of action arose before such statute.

Payee against a *Goldsmith* on a note drawn by the (1) *Servant*, alledging the *custom of London* to make such Goldsmith liable for the acts of his servant.

(1) See cases, last Precedent.

LONDON, *ss.* That whereas the city of London now is and from time immemorial hath been an ancient city; and whereas within the said city there is and from time immemorial there hath been this custom, used and approved of, to wit, that if any *servant* of any *goldsmith*, or of any other person in the said city trading and using commerce in receiving and paying money, employed and entrusted by such his master in keeping and writing of books and bills or notes concerning such receipts and payments, should make any *bill or note subscribed with the proper hand and name of such servant*, and by such his bill or note promise to pay for such his master, to any other person on such bill or note named, or *bearer on demand*, any sum of money in such bill or note mentioned, then such master of such servant so making and subscribing such bill or note, from time immemorial hath been liable, and hath been accustomed to be liable, to the payment of such sum of money mentioned in such bill or note, to such person named in such bill or note as was so promised or expressed to be paid on demand, according to the tenor of such bill or note, to wit, at London aforesaid, in the parish of, &c. in the ward of, &c. And whereas

whereas the said defendant, at the time of the making of the note hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, was a goldsmith, and a trader in that business, and a person there trading and using commerce in the receiving and paying of money; and on the same day and year, and long before and afterwards, one Richard Wood was the servant of the said defendant, and was by him employed and entrusted in the keeping and writing of books and bills or notes concerning such receipts and payments; and the said R. W. so being the servant of the said defendant as aforesaid, and so being employed and entrusted as aforesaid, he the said R. W. on the said nineteenth of September in the year aforesaid, at, &c. aforesaid, according to the said custom, made a certain note in writing, bearing date the same day and year, subscribed with the proper hand and name of the said R. W. and by that note the said R. W. promised to pay to the said plaintiff, by the name, &c. of, &c. or bearer, on demand, two hundred and thirty pounds for the said defendant (then being his master as aforesaid); whereby the said defendant, according to the said custom, became liable to pay to the said plaintiff on demand the said two hundred and thirty pounds mentioned in the said note, according to the tenor of the said note, and according to the said custom; and being so liable, the said defendant, in consideration, &c. undertook, &c. and although the said plaintiff afterwards, to wit, on, &c. at, &c. aforesaid, shewed and *presented* the said note so made by the said R. W. as aforesaid to the said defendant, and demanded the payment of the said sum of two hundred and thirty pounds therein specified of the said defendant, yet the said defendant, not regarding, &c. (common conclusion. Then add a Count for two hundred and thirty pounds, as if the said note had been made by defendant himself; money lent; money had and received; and common conclusion to three last Counts.)

Administratrix cum testament. annex. of Payee against a surviving Partner maker.

MIDDLESEX, *ss.* T. W. administratrix, &c. of S. T. deceased, with the last will and testament of S. T. annexed, against J. L. for that whereas before and at the time of the making of the promises and undertakings hereafter mentioned, and afterwards, the said defendant and one M. C. now deceased, and whom the said defendant hath *survived*, were *partners* and joint dealers together in trade and commerce, to wit, at, &c. and the said defendant and M. C. being such partners and joint dealers together, the said defendant, in the lifetime of the said M. C. and also in the lifetime of the said *S. T.* (plaintiff's testator,) to wit, on, &c. at, &c. aforesaid, for himself and the said M. C. his said partner, made and signed a certain note (&c. as in declaration *ante*, fo. 343. *Payees*, &c. against *Drawers*, *partners*, on note made by one of them, till you have stated the *delivery* of the note, then proceed as follows): whereby, and by reason, &c. and by force of the statute, &c. the said defendant and M. C. in the lifetime of the said M. C. and also in the lifetime of the said *S. T.* (plaintiff's testator,)

tor,) became liable to pay to the said S. T. the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, they the said defendant and M. C. in the respective lifetimes of the said M. C. and S. T. to wit, on, &c. at, &c. undertook, &c. And whereas, &c. (the usual common Counts, and the following conclusion): Yet the said defendant and *M. C.* (deceased partner,) in the lifetime of the said M. C. and the said defendant, after his decease, not regarding, &c. but contriving, &c. to deceive and defraud the said *S. T.* (plaintiff's testator,) and the said plaintiff, to whom administration of all and singular the goods and chattels, rights and credits, which were of the said S. T. deceased, at the time of his death, with the will of the said S. T. after the death of the said S. T. to wit, on, &c. at, &c. was by, &c. in due form of law committed,) after his death, in this behalf have not, nor hath either of them, paid the said several sums of money in such promises and undertakings mentioned, or any or either of them, or any part thereof, either to the said S. T. in his lifetime, or to the said plaintiff, administratrix as aforesaid, since his death, although (*a*) to pay the same the said defendant and M. C. were requested by the said S. T. in the lifetime of the said S. T. and also in the lifetime of the said M.C. to wit, on the aforesaid day of in the year aforesaid, and often afterwards, as was the said defendant by the said S.T. in his lifetime, and by the said plaintiff, administratrix as aforesaid, after the death of the said S. T. and after the death of the said M. C. to wit, at Westminster aforesaid); but they the said defendant and M. C. to pay the same have, and each of them hath, always wholly refused, and the said defendant still refuses to pay the same to the said plaintiff, administratrix as aforesaid, to the damage of the said plaintiff, as such administratrix as aforesaid, of l. suit, &c. And she also brings into court here the letters of administration of the said S. T. bearing date the day and year in that behalf above mentioned, with the will of the said S. T. annexed, which sufficiently testify to the Court here the granting the administration aforesaid to the said plaintiff.

Conclusion in assumpsit at suit of *Administratrix* against surviving *Partner.*

(*a*) The facts of this averment cannot be material, though it is usual to make it agreeable to the real circumstances of the case if they are known. This averment is drawn upon the idea of defendant's partner having died before plaintiff's testator.

LONDON, to wit. J. H. esquire, administrator, &c M. B. esquire, deceased, limited until the original last will testament of the said deceased, or an attested copy thereof, should be brought into and left in the registry of the court of the Archbishop of Canterbury, Primate of all England, and metropolitan, and letters of administration to the will annexed, of all

Declaration by *Administrator*, limited until the original will, or a copy thereof, should be brought into the Archbishop's court, *Payee* of a note of hand, Carolina currency, against *Maker* for non-payment.

all and singular the goods and chattels and credits of the deceased should be applied for and granted by the said court, but no further or otherwise, or in any other manner; complains of Sir J. W. bart. being, &c. for that whereas the said Sir J. after the first day of May, which was in the year of Our Lord 1705, that is to say, on the seventh of December 1774, at Susannah in Georgia, that is to say, at London, &c. made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the same day and year last aforesaid, and then and there delivered the said note to the said M. in his lifetime; and by the same note then and there faithfully promised to pay to the said M. in his lifetime by the name of, &c. or order, on or before the first of February next following the date of the said note, eight thousand eight hundred and two pounds five shillings South Carolina currency, with interest from the date thereof, for value received; by reason whereof, and by force of the statute in such case made and provided, the said Sir J. became liable to pay to the said M. in his lifetime the said sum of money mentioned in the said note, according to the tenor and effect of the said note; and being so liable, (assumpsit, &c.) And the said J. N. avers, that the said eight thousand eight hundred and two pounds five shillings South Carolina currency, at the time of making the said note, was and from thence hitherto hath been, and still is, of the value of, &c. to wit, at, &c. (Goods sold, &c. Another Count on the note, and presentment after it became due, &c.) Yet the said defendant, not regarding, &c. to the said Joseph, after the death of the said M. to which said J. administration of all and singular the goods, chattels, and credits which were of the said M. at the time of his death, limited until the original will, &c. to the damage, &c.: with this, that the said J. will verify that the original last will and testament of the said deceased, or an authentick or other copy thereof, hath not yet been brought into or left in the registry of the court of the archbishop, and letters of administration with the same annexed of all and singular the goods, chattels, and credits of the said deceased been applied for or granted by the same court, and the said letters of administration are now in full force and effect. GEO. WOOD.

Payee against Drawer.

WH[illegible]RE[illegible] the circumstances of the note, with the liability and assumpsit to pay as the case shall require; then insert the following averment and conclusion): And the said plaintiff avers, that although the said defendant hath paid a part of the money mentioned in the aforesaid note, that is to say, the sum of, &c. to the said plaintiff, to wit, at, &c. aforesaid; yet the said

Declaration against the Maker, where part of the money has been paid (a).

(a) The only part of this Precedent that was worth preserving is the *averment and conclusion*, though they are seldom or never used; the practice being *to take no notice of a payment in part, it coming properly from the other side*; and the breach of the Assumpsit on which the action is brought being of such a nature as not to require proof *in toto*, but of any part merely.

de-

defendant, not regarding, &c. but contriving, &c. hath not as yet paid the residue of the said sum in the said note specified, or any part thereof, to him the said plaintiff, (although so to do the said defendant was requested by the said plaintiff, as well at the end of the time appointed for the payment of the money in the said note specified, to wit, on the *(b)* day of in the year aforesaid, as afterwards, to wit, at, &c. aforesaid,) but, &c. hath hitherto wholly refused and neglected, and still refuses so to do, to wit, at, &c. aforesaid.

(*b*) Day of payment, including days of grace.

(*a*) *Payee* against *Maker*, on a note payable *when defendant's wife came of age.*

THAT whereas on the twenty-seventh day of June A.D. 1730, at, &c. made and signed his certain note, &c. and thereby acknowledged himself to have borrowed and received, on the said twenty-seventh of June in the year 1730 aforesaid, of the said plaintiff, the sum of one thousand pounds, being for the purchasing for himself a lieutenant's commission in the first regiment of foot guards, under the command of the right honourable the Duke of Marlborough, and which said one thousand pounds he the said defendant, in and by the said note, promised to pay on demand, *as soon as his wife should attain the age of twenty-one years*, and then and there delivered, &c.; whereby, and by reason, &c. and by force of the statute, he the said defendant became liable to pay, &c. according to the tenor and effect of the said note; and being so liable, &c. (assumpsit accordingly). And whereas the said defendant heretofore, to wit, on the day and year aforesaid, at, &c. aforesaid, (indebitatus assumpsit for money "borrowed and received of plaintiff by defendant;" assumpsit to pay *when F. the then and now wife* of the said defendant, should attain the age of twenty-one years; another Count for money lent, and like assumpsit, and a general insimul computasset; then introduce the following averment): And the said plaintiff in fact saith, that athough the said F. the wife of the said defendant, at the time of

Averment that wife has attained her age of twenty-one years.

(*a*) There are doubts whether the note be within the statute or not, though it will be good evidence under either of the common Counts. It seems to depend upon a contingency that may never happen, as the defendant's wife may never attain the age of twenty one. It will however serve as a precedent for notes payable upon a (a) *certain event*, as *death* or the like. A note made payable certainly and at all events is good within the statute 3. and 4. Anne; *secus*, if it be (b) *contingent*, and (c) *uncertain* whether it shall ever be paid or not. A note given to an (d) *infant* payable when he shall come of age is of the former kind. 1. Burr. 227, &c. A note payable on the death [redacted]f G. H (e) *provided he leaves either of us*, [redacted]&c. or, &c. is of the latter kind; and the declaration, being upon an *absolute note*, was not supported by the production of a [redacted]. 1. Burr. 325. [redacted]

(a) Str. 1217.

(b) B. R. Kingston v. Long, M. 25. G. 3. 3. Lord Raym. 67. Lord Raym. 1362. 1396. 8. Mod. 363. 4. Vin. 4 0. Pl. 16.

(c) Fort. 281. 10. Mod. 294. 316. Lord Raym. 1563. Bl. 782. 3. Wilf. 207. Bl. 1072. Wilf. 262.

(d) Bailey on Bills and Notes, 10.

(3) Burr. 323. Str. 1151. Com. 227. 4. Mod. 242.

making of the said note herein before mentioned, and also at the time of the making of the three several promises and undertakings first above mentioned, after the making of such promises and undertakings, to wit, on the eighteenth of January 1732, *did attain the age of twenty-one years*, to wit, at, &c. Yet, &c. (common conclusion) that the said plaintiff did not, (1) *upon his said wife's attaining the age of twenty-one years*, pay, nor hath he at any other time whatsoever paid, &c. although, &c. (Lay the request as well when his said wife attained her age of twenty-one years as aforesaid as afterwards) to wit, at, &c. aforesaid; but he so to do hath wholly refused and neglected, and still, &c. (1) Burr. 226.

(a) *Payee* against *Drawer* on a note made by the drawer's wife as his servant.

THAT whereas the said defendant, on the twenty-fourth of July A. D. 1733, at, &c. [insimul computassent] promise to pay "*when requested*." 2d Count, [insimul computassent] promise to pay, twenty-fourth July 1734 (when the note became payable). And whereas the said defendant, on the said twenty-fourth of July in the year 1733 aforesaid, at, &c. aforesaid, (note made by himself). And whereas heretofore, to wit, on the said twenty-fourth day of July in the year 1733 aforesaid, at, &c. aforesaid, *one Mary Ferrers, then and there being the servant of the said defendant, in that behalf for him the said defendant*, made and signed a certain note, &c. bearing date, &c. and thereby, for the said defendant, promised to pay to the said plaintiff, by the name and description of, &c. or order, twelve months after the date of the said note, forty pounds for value received, and then and there delivered, &c. whereby, and by reason, &c. and by force of the statute, &c. the said defendant became liable to pay, &c. according to the tenor and effect of the said last-mentioned note; and being so liable, &c. (assumpsit accordingly). [Add the usual common Counts, except the insimul computassent, which is already directed; and common conclusion.]

All the Counts may remain, though the first and the third are unnecessary. The first is inconsistent with the fact, and the third is included in the fourth, which is upon the real case. It might also be as well were they transposed, and the Count upon the note put first.

Declaration on note *bearing a wrong date*.

FOR that whereas said defendant, on the twenty-eighth of January A. D. 1742, at, &c. made and signed his certain note in writing, commonly called, &c. bearing date the twenty-eighth *of January* 1724, when in truth and in fact the said note was meant, intended, and understood to bear date *the twenty-eighth day of January* 1742; and by the said note defendant promised, &c. (as in other cases).

FOR

Declaration on note payable *by instalments, where several instalments are due.*

FOR that whereas the said defendant, on, &c. at, &c. made and signed his certain note in writing, commonly called, &c. bearing date, &c. and thereby promised to pay to the said plaintiff, by the name of, &c. or order, the sum of fifteen pounds for value received, in manner following, that is to say, *at half a guinea by the month from the date of the said note*; and that on the non-payment thereof the whole of the said note should be in force; and then and there delivered, &c. whereby, and by reason, &c. and by force of the statute, &c. the said defendant became liable to pay to the said plaintiff the said sum of fifteen pounds in the said note specified, according to the tenor and effect of the said note; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, undertook, &c. to pay the said sum of money in the said note specified, according to the tenor and effect of the said note ×. And the said plaintiff in fact further saith, that after the making of the said note, and after the making of the aforesaid promises and undertakings of the said defendant, and before the exhibiting, &c. to wit, on the first day of November, in the year 1787, aforesaid, at, &c. aforesaid, a great part of the said sum of fifteen pounds in the said note specified, to wit, the sum of five pounds fifteen shillings and sixpence, being at and after the rate of half a guinea per the month for eleven months, elapsed since the making of the said note, and ending and ended on the day and year last aforesaid, became and was due and payable from the said defendant to the said plaintiff; but that the said defendant did not then and there pay the same, or any part thereof, to him the said plaintiff, but therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning, of the said note, and the aforesaid promise and undertaking of the said defendant; whereby, and according to the tenor and effect of the said note, and the aforesaid promise and undertaking of the said defendant, the whole of the said note became and was in force, and the said sum of fifteen pounds therein specified, became and was due and forthwith payable from the said defendant to the said plaintiff, to wit, at, &c. aforesaid; whereof the said defendant afterwards, to wit, on the second day of the said month in the year last aforesaid, there had notice. And whereas, &c. (the common Counts, "on the day and year last aforesaid," and the following conclusion): Yet the said defendant, not regarding his said several promises and undertakings so by him in manner and form aforesaid made, but contriving, &c. hath not as yet paid the said sum of fifteen pounds in the aforesaid note specified, or any part thereof, nor the said sums of money in the said last-mentioned promises and undertakings mentioned, or any or either of them, or any part thereof, to the said plaintiff, (although so to do he the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at, &c. aforesaid); but he so to do hath hitherto wholly refused, and still refuses so to do, to wit, at, &c. aforesaid.

(GO on as in the last Precedent, till you come to the end of the assumpsit at this mark ×, then proceed as follows:) And the said plaintiff in fact further saith, that after the making, &c. and before the exhibiting, &c. to wit, on, &c. one month from the date of the said note being then elapsed, ten shillings and six pence, part of the said sum of fifteen pounds in the said note specified, as and for the first of the said monthly payments in the said note mentioned, became and was due from the said defendant to the said plaintiff; but that the said defendant did not then and there pay, &c. but therein wholly failed, &c. contrary, &c. whereby, &c. the whole of the said note became and was in force; and the said sum of fifteen pounds therein specified became and was due and forthwith payable from the said defendant to the said plaintiff; whereof, &c. had notice.

Declaration on a similar note with the last *where only one instalment was due at the time of bringing the action.*

(PROCEED as in the last Precedent but one, till you come to this mark + at the end of the assumpsit, then go on as follows:) And the said plaintiff in fact further saith, that although the said defendant paid a part of the said sum of fifteen pounds in the said note specified, to wit, the sum of five pounds fifteen shillings and six pence, according to the tenor and effect of the said note; yet the said plaintiff in fact further saith, that after the said sum of five pounds fifteen shillings and six pence had been and was so paid and accepted, and before the exhibiting, &c. to wit, on the first day of November, in the year of Our Lord 1795, at, &c. aforesaid, ten shillings and six pence of the residue of the said sum of fifteen pounds in the said note specified, for one of the monthly payments in the said note mentioned, becoming payable next after the payment of the said sum of five pounds fifteen shillings and six pence so paid as aforesaid, became and was due and payable from the said defendant to the said plaintiff; but that the said defendant did not then and there pay the same, &c. but therein wholly failed, &c. contrary, &c. whereby, &c. the said note became in force *as to the residue of* the said sum of fifteen pounds therein specified; and such residue, being a large sum of money, to wit, &c. became and was forthwith payable from the said defendant to the said plaintiff, to wit, at, &c. aforesaid; whereof the said defendant afterwards, to wit, on the second day of the said month of November, in the year aforesaid, there had notice. (Like Counts and conclusion as in the last Precedent but one, varying only in this, viz.) hath not paid the said residue of the said sum of fifteen pounds in the said note specified, or any part thereof, nor, &c. to the said plaintiff, (although, &c. but, &c.)

Declaration on a similar note *where part has been paid, and the residue becomes payable in consequence of the non-payment of an intermediate instalment.*

(PROCEED as in the three last preceding declarations, till you have stated the assumpsit in the Count upon the note; then go on with the common Counts, laying the cause of action *on a* day

Declaration on a similar note *where no part of the note has been paid, though sufficient time for the payment of the whole has elapsed.*

day subsequent to that on which the whole note became due; then go on with the following averment and conclusion:) And the said plaintiff in fact further saith, that although *a sufficient time* for the payment of the said sum of fifteen pounds in the said note specified, according to the tenor and effect of the said note, hath long since elapsed, yet the said defendant, not regarding his said several promises and undertakings so by him, &c. but contriving, &c. hath not as yet paid the said sum of fifteen pounds in the said note specified, or any part thereof, according to the tenor and effect of the said note, or in any other manner whatsoever, nor the said several sums of money in the several last-mentioned promises and undertakings specified, or any or either of them, or any part thereof, to the said plaintiff, (although so to do he the said defendant was requested by the said plaintiff, to pay the said several sums of money in the said promissory note mentioned as the same respectively became due and payable, according to the tenor and effect of the said note, as also the said several sums of money, as well as to such money become due and payable, as since the making of the said several last mentioned promises and undertakings, to wit, on the day and year last aforesaid, and often afterwards, to wit, at, &c. aforesaid,) but he so to do hath hitherto wholly refused, and still refuses, to wit, at, &c. aforesaid.

Declaration by *Executors of Payee against Maker on a promise to the execut.*

FOR that whereas the said C. D. to wit, on the fifteenth day of September A. D. 1789, at Westminster in the county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to the said E. F. in his lifetime; by which said note he the said C. D. then and there promised to pay, &c. after the date thereof, to the said E. F. in his lifetime, (by the name and addition of Mr. E. F.), or order, the sum of sixty pounds for value received; by means whereof, and by force of the statute in such case made and provided, he the said C. D. became liable to pay to the said E. F. in his lifetime, the said sum of money in the said note specified, according to the tenor and effect of the said note: and the said A. and B. *executors* as aforesaid in fact say, that after the making of the said note, and before the payment of the said sum of money therein specified, to wit, on the fourth day of November, in the year of Our Lord 1789 aforesaid, at, &c. aforesaid, the said E. F. died, having first duly made and published his last will and testament in writing, and thereby constituted and appointed the said A. and B. *executors* thereof; after whose death, and before the payment of the said sum of money in the said note specified, to wit, on the eighteenth day of November, in the year last aforesaid, at, &c. aforesaid, the said A. and B. duly proved the said last will and testament of the said E. F. and took upon themselves the burthen of the execution thereof; of all which said several promises the said C. D. afterwards, to

wit,

wit, on the fifth day of December, in the year of Our Lord 1789, at, &c. aforesaid, had notice; and thereupon he the said C. D. in consideration thereof, then and there, and before the payment of the said sum of money in the said note specified, to wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said A. and B. as *executors* as aforesaid, to pay them the said sum of money in the said note specified, when he the said C. D. should be thereto afterwards requested.

Declaration against the surviving Maker of a joint promissory note bearing interest, at suit of Payee; with a Count upon the *acknowledgment* of defendant alone, to take it out of the statute of Limitations. Vide 2. Burr. 1099.

CHESHIRE, *ss.* Robert Woodhouse complains of Rowland otherwise Robert Cadman, being in the custody, &c. in a plea of trespass on the case, &c. for that whereas the said defendant, and one Thomas Cadman deceased, whom the said defendant hath survived, in the lifetime of the said Thomas Cadman, to wit, on the *fourth day of April A. D.* 1772, to wit, at Nantwich in the said county of Chester, made their certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and signed by them the said defendant and Thomas Cadman, and thereby then and there promised to pay to the said plaintiff, or order, the sum of thirty pounds, *with interest* for the same, after the rate of four pounds to the hundred for a year for *value received*, and then and there delivered the said note to the said plaintiff: whereby, and by reason whereof, and by force of the statute in such case made and provided, the said Thomas Cadman and defendant became liable to pay to the said plaintiff the said sum of thirty pounds in the said note specified, with such interest for the same as aforesaid, according to the tenor and effect of the said note; and being so liable, they the said Thomas Cadman and defendant, in consideration thereof, afterwards, in the lifetime of the said Thomas Cadman, to wit, on the day and year aforesaid, at Nantwich aforesaid, in the county aforesaid, undertook, and faithfully promised the said plaintiff, to pay him the said sum of thirty pounds, in the said note specified, with such interest for the same as aforesaid, according to the tenor and effect of the said note. And whereas the said defendant and Thomas Cadman afterwards, in the lifetime of the said Thomas Cadman, to wit, on the day and year aforesaid, at, &c. aforesaid, were indebted to the said plaintiff in the sum of fifty pounds of lawful, &c. for money by them the said defendant and Thomas Cadman before that time had and received to the use of the said plaintiff; and being so indebted, they the said defendant and Thomas Cadman, in consideration thereof, afterwards, to wit, in the lifetime of the said Thomas Cadman, to wit, on the day and year aforesaid, at, &c. aforesaid, undertook, and faithfully promised the said plaintiff, to pay him the said last mentioned sum of money, when they should be thereto afterwards requested: Yet the said defendant and Thomas Cadman, in the lifetime of the said Thomas Cadman, and the said defendant since the death of the said Thomas Cadman, not regarding their said several promises and undertakings so by them in

Conclusion to the first two Counts.

manner and form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, have not, nor hath either of them, paid the said sum of thirty pounds in the said first promise and undertaking mentioned, with such interest for the same as aforesaid, or *for* any part thereof, nor the said sum of money in the other promise and undertaking hereinbefore mentioned, or any part thereof, to the said plaintiff, (although so to do the said defendant and Thomas Cadman were required by the said plaintiff in the lifetime of the said Thomas Cadman, to wit, on the day and year aforesaid, as was the said defendant since the death of the said Thomas Cadman, to wit, on the first day of January A. D. 1753, and often both before and afterwards, to wit, at Nantwich aforesaid, in the county aforesaid,) but they or either of them, to pay the same, or any or either of them, to the said plaintiff, have, and each of them hath, wholly refused and neglected, and the said defendant still refuses so to do. And whereas the said defendant, and the aforesaid Thomas Cadman deceased, in the lifetime of the said Thomas Cadman, to wit, on the said fourth day of April in the year 1772 aforesaid, to wit, at Nantwich aforesaid, in the county aforesaid, made their certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and signed by them the said defendant and the said Thomas Cadman, and thereby then and there promised to pay to the said plaintiff, or order, the sum of thirty pounds, with interest for the same at the rate of four pounds to the hundred for a year, for value received, and then and there delivered the said last mentioned note to the said plaintiff; whereby, and by reason whereof, and by force of the statute in such case made and provided, the said Thomas Cadman and the said defendant became liable to pay to the said plaintiff the said sum of thirty pounds in the said last mentioned note specified, with such interest for the same as aforesaid, according to the tenor and effect of the said last mentioned note; and the said defendant and Thomas Cadman having been, and the said defendant being so liable as last aforesaid, and the said sum of thirty pounds in the said last mentioned note specified, with such interest for the same as aforesaid, from the time of the making of such last mentioned note, being wholly unpaid and in arrear to the said plaintiff, the said defendant, in consideration of such premises, after the death of the said Thomas Cadman, and whilst the said sum of thirty pounds *and such interest* as aforesaid were so in arrear and unpaid as aforesaid, to wit, on the thirteenth day of January A. D. 1783 as aforesaid, at Nantwich aforesaid, in the county aforesaid, undertook, and faithfully promised the said plaintiff, to pay the said sum of thirty pounds in the said last mentioned note specified, *with such interest* as in the said last mentioned note is specified, from the date of the said last mentioned note, according to the tenor and effect of the said note: Yet the said defendant, not regarding his said last mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently in-

A Count on the note *for the interest*, and on a promise by defendant *since the death* of the deceased, joint maker, on his own acknowledgment.

Conclusion.

intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not paid the said sum of thirty pounds in the said note in the said last mentioned promise and undertaking specified, with such interest for the same as aforesaid, or for any part thereof, to the said plaintiff, (although so to do the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at Nantwich aforesaid, in the county aforesaid,) but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of one hundred pounds; and therefore he brings his suit, &c.

Declaration in B. R. *upon a joint promissory note*, payable by instalments.

See this case reported 2 Term Rep. 763 *Cockshot et al.* against *Bennett et al.*

J. C. and H. L. complain of T. B. and W. W. being in the custody of the marshal of the Marshalsea of our lord the now king, &c. for that whereas the said L. and W. on the day of in the year of Our Lord 1787, at Calne, in the said county, *made* and *signed* their certain note in writing, commonly called a promissory note, bearing date on the day and year aforesaid, and then and there *delivered* the said note to the said John and Henry; by which said note they the said Thomas and William *jointly and severally* promised to pay to the said John and Henry, by the name and description of Messrs. L. and C. or order, one hundred and four pounds three shillings, value received, *by the following payments or installments*, that is to say, one moiety or one-half part, being fifty-two pounds one shilling and sixpence, on the first day of January then next ensuing, and the other moiety or fifty-two pounds one shilling and sixpence thereof on the first day of July in the year 1788; but on failure of either of the said payments, the said T. and W. did, by the said note, promise and agree that *the whole sum of money* therein specified should then become due and demandable: *and* the said John and Henry in fact say, that afterwards, to wit, on the first day of January in the year last aforesaid, failure was made in one of the said payments, that is to say, in the payment of fifty-two pounds one shilling and sixpence, which after the making of the said note, to wit, on the day and year last aforesaid, became due and payable by them the said T. and W. to them the said J. and H. according to the tenor and effect of the said note; by reason whereof, and by *force of the statute* in such case made and provided, the said T. and W. became liable to pay to the said John and H. the whole sum of one hundred and four pounds three shillings in the said note mentioned, according to the tenor and effect of the said note; and being so liable, they the said T. and W. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at C. aforesaid, in the said county, undertook, and to the said John and Henry then and there *faithfully promised*, to pay them the said sum of one hundred and four pounds three shillings, upon demand. *And* whereas also the said Thomas and William afterwards, to wit, on the aforesaid eighteenth day of April in the year of Our Lord 1787, at C. aforesaid, in the said county, made

2d Count for the whole.

made their certain other note in writing, commonly called a promissory note, their own proper hands being thereunto *subscribed*, bearing date the same day and year last aforesaid, and then and there delivered the said last mentioned note to the said John and Henry; by which said last mentioned note they the said Thomas and William promised to pay to the said John and Henry, (by the name, addition, and description of Messrs. L. and C.) or order, one hundred and four pounds three shillings, by the following payments or instalments, that is to say, one moiety or half part, being fifty-two pounds one shilling and sixpence, on the first day of January then next ensuing, and the other moiety, or fifty-two pounds one shilling and sixpence, on the first day of July 1788, *value then received* by them the said Thomas and William; by reason whereof, and also *by force of the statute* in such case made and provided, the said Thomas and William became liable to pay to the said John and Henry the said sum of money in the said note mentioned, according to the tenor and effect of the said note; and being so liable, they the said Thomas and William, in consideration thereof, afterwards, to wit, on the aforesaid eighteenth day of April in the year 1787, at C. aforesaid, in the county aforesaid, undertook, and to the said T. and H. then and there faithfully promised to pay to them the said sum of money mentioned in the said last mentioned note, according to the tenor and effect of the said last mentioned note. (Count for goods sold and delivered; indebitatus assumpsit thereon; another Count upon a quantum meruit; Counts for money lent and advanced; money paid, &c.; money had and received; account stated. Damnum two hundred pounds.)

Plea thereto: 1st, Non assumpsit; 2d, Of *payment*, and acceptance of a gross sum in satisfaction.

And the said T. B. and W. W. by James H. their attorney, come and defend the wrong and i jury, when, &c. and say, that they *did not undertake* and promise in manner and form as the said J. Cockshot and H. Lister have above thereof complained against them; and of this they put themselves upon the country, &c. *And for further plea* in this behalf the said Thomas Bennett and W. W. by leave of the Court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said J. Cockshot and Henry Lister ought not to have or maintain their aforesaid action thereof against them the said T. B. and W. W. because they say, that after the making of the aforesaid promises and undertakings in the said declaration mentioned, and before the day of exhibiting of the bill of the said John C. and H. L. against them the said T. B. and W. W. to wit, on the eighteenth day of July 1787, at C. aforesaid, in the county of Lancaster, they the said Thomas B, and W. W. *paid* to the said J. C. and H. L. the sum of one hundred and twenty-one pounds five shillings, in full satisfaction and *discharge* of all and every the aforesaid promises in the said declaration mentioned, and of the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, and that the said

J. C.

J. C. and H. L. then and there *accepted*, had, and received of the said Thomas Bennett and W. W. the said sum of one hundred and twenty-one pounds five shillings, in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them; and this the said T. B. and W. W. are ready to verify; wherefore they pray judgment if the said J. C. and H. L. ought to have and maintain their aforesaid action thereof against the said Thomas Bennet and W. W. &c. *And for further* plea in this behalf, the said T. B. and W. W. by leave of the Court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said J. C. and H. L. ought not to have or maintain their aforesaid action thereof against them the said T. B. and W. W. because they say, that after the making of the said promises and undertakings in the said declaration mentioned, and before the day of exhibiting the bill of the said J. C. and H. L. against them the said T. B. and W. W. to wit, on the eighteenth day of April in the year of Our Lord 1787, at C. aforesaid, in the county of L. aforesaid, they the said T. B. and W. W. (and one Henry Bennett as the *surety* of the said T. B. and W. W.) made their certain note in writing, commonly called a promissory note, with their and *each* of their hands thereunto subscribed, bearing date the same day and year last aforesaid, and the said last mentioned note, so subscribed, then and there *delivered* to the said J. C. and H. L.; by which said last mentioned note they the said T. B. W. W. and H. B. did *jointly and severally* promise to pay to the said John C. and H. L. (by the name and description of Messrs. L. and C.) or order, one hundred and twenty-one pounds five shillings, on the fifth day of July then next ensuing, for *value therein expressed to have been received* by the said T. B. and W. W. and H. B.: and the said T. B. and W. W. further say, that the said last mentioned promissory note was so delivered as aforesaid to the said John Cockshot and H. L. by the said T. B. and W. W. and the said H. B. as their surety, in full satisfaction and *discharge* of all and every of their aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. C. and Henry L. by reason of the non-performance of the same promises and undertakings, and each and every of them; and that the said J. C. and H. L. then and there *accepted*, had, and received the said last mentioned promissory note from the said T. B. and W. W. in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them: and the said T. B. and W. W. further say, that after the making and delivering of the said last-mentioned promissory note by the said T. B. and W. W. and Henry B. to the said J. C. and

3d, That defendants, with a *surety*, gave a promissory note to plaintiffs for a sum in gross in satisfaction, which plaintiffs accepted as such, and which was duly paid.

and H. L. and then having, accepting, and receiving, the same as aforesaid, to wit, on the said fifteenth day of July in the year of Our Lord 1787, at C. aforesaid, in the county aforesaid, they the said T. B. W. W. and H. B. *paid* to the said J. C. and H L. the said one hundred and twenty-one pounds five shillings mentioned in the said last mentioned promissory note, according to the tenor and effect of the same promissory note; which said one hundred and twenty-one pounds five shillings the said J. C. and H. L. then and there accepted, had, and received, in full satisfaction and discharge of the said last mentioned promissory note; and this the said T. B. and W. W. are ready to verify; wherefore they pray judgment if the said J. C. and H. L. ought to have or maintain their aforesaid action thereof against them the said T. B. and W. W. &c.

Replication to the second plea, protesting that defendant did not pay the money therein mentioned in satisfaction: For replication says, that plaintiffs did not so receive it.

And the said John and Henry L. as to the said plea of the said Thomas and William by them secondly above pleaded in bar, say, that the said John and H. L. by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against them the said T. and W.; because *protesting*, that the said Thomas and William *did not pay* to the said J. and H. L. the sum of one hundred and twenty-one pounds five shillings, in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damage sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged: Nevertheless, for replication in this behalf, the said J. and H. L. say, that they the said J. and H. L. did not, nor did either of them, *accept*, have, or receive of the said Thomas and William the said sum of one hundred and twenty-one pounds, five shillings, in full satisfaction and *discharge* of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged; and this the said J. and H L. pray may be inquired of by the country; and the said Thomas and William do the like, &c. *And as* to the said plea of the said Thomas and William by them lastly above pleaded in bar, they the said J. and H. L. say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against them the said Thomas and William; because *protesting*, that the said Thomas and William, and the said Henry Bennett, in the said plea mentioned as the *surety* of the said Thomas and William, *did not deliver the said promissory note*, delivered to the said J. and H. L. by the said Thomas, William, and Henry B, as their surety, in full satisfaction and discharge of

Replication to third plea, same.

all

all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said John and Henry L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged: Nevertheless, for replication in this behalf, the said John and H. L. did not accept, have, and receive the said promissory note in the said plea mentioned from the said Thomas and William and the said H. B. in full satisfaction and discharge of all the aforesaid promises and undertakings in the said declaration mentioned, and the damages sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged; and this they the said J. and Henry pray may be inquired of by the country; and the said Thomas and William do the like.

N. B. The defendants obtained a verdict at the summer assizes 1788; and Law, of counsel for the plaintiff, obtained a rule to shew cause why a new trial should not be granted, which was afterwards discharged in M. T. 1788. For the arguments see 2 Term Rep. 763. B. R. 117.

Declaration by a surviving *Payee* against *two Makers* of a promissory note, payable by *instalments, where only some were due.*

WILLIAM TYRER complains of Robert Lawson and John Tunstall, being, &c. in a plea of trespass on the case, &c. for that whereas the said defendants heretofore, *in the lifetime* of one Joshua Birchall, deceased, whom the said William Tyrer hath survived, to wit, on the sixth day of December in the year of Our Lord 1788, to wit, at Liverpool in the county of Lancaster, made and signed their certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there delivered the said note to the said William Tyrer and the said Joshua Birchall; by which said note they the said defendants, jointly and separately, promised to pay to the said plaintiff and the said Joshua Birchall, by the name and description of Mr. William Tyrer and Mr. Joshua Birchall, or order, the sum of twelve pounds nine shillings, by four quarterly instalments, the first payment whereof to commence and be made on the sixth day of March then next ensuing, for *value received:* and the said plaintiff in fact says, that *after the making* of the said note, and *after the death* of the said Joshua Birchall, and *before the exhibiting* of this bill, to wit, on the sixth of September 1789, to wit, at Liverpool aforesaid, in the county aforesaid, *three of the said instalments* or quarterly payments of the said sum of money in the said note mentioned, amounting in the whole to a large sum of money, to wit, the sum of nine pounds six shillings and ninepence of lawful money of Great Britain, *became and were due* and payable from the said Robert and John, according to the tenor and effect of the said note, to the said plaintiff as survivor of the said

States the whole to have become payable by the non-payment of the instalment

said Joshua; whereof the said Robert and John then and there had due notice: whereby, and by reason of which several premises, *and by force of the statute* in such case made, &c. the said defendants became liable to pay to the said plaintiff the said three of the said four several instalments in the said note specified, according to the tenor and effect of the said note; and being so liable, they the said Robert and John, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said three of the said four several instalments in the said note specified, according to the tenor and effect of the said note. And whereas the said defendants, in the lifetime of the said Joshua Birchall, now deceased, to wit, on the sixth day of December in the said year of Our Lord 1788, at Liverpool aforesaid, in the county aforesaid, made and signed their certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid; and thereby *jointly and separately* promised to pay to the said William Tyrer and Joshua Birchall, by the names and descriptions of Mr. William Tyrer and Mr. Joshua Birchall, or order, the sum of twelve pounds nine shillings, by four quarterly instalments, the first payment whereof to commence and be made on the sixth day of March next after the making of the said note, and then and there delivered the said note to the said plaintiff and the said Joshua Birchall. And the said plaintiffs in fact further say, that after (as in the other Count) three of the said instalments or quarterly payments of the said money in the said last mentioned note, according to the tenor and effect thereof, became and were due and payable from the said defendants to the said plaintiff as *survivor* of the said Joshua Birchall; whereof the said defendants then and there had due notice: whereby, and by reason of which said several last mentioned premises, and by force of the statute in such case, &c. the said Robert and John became liable to pay to the said plaintiff the said sum of money in the said last mentioned note specified, when they the said defendants should be thereto afterwards requested; and being so liable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said last mentioned note specified, when they the said defendants should be thereto afterwards requested. (Counts for money paid, &c.; money lent, &c.; money had and received, &c.; upon account stated; common conclusion.)

2d Count for all the instalments.

In drawing this declaration I have considered Birchall as dead when the 3d instalment became due. I have inserted the 2d Count on the authority of the case of Beckwith against Nott, Cro. Jac. 504. which says, that in such a case as this it is best to count of damages for the entire debt, because the jury may give the whole sum in damages; and, if they do, it may be pleaded in bar to another action.

THOMAS BARROW.

SUFFOLK,

SUFFOLK, to wit. Richard Debney, late of, &c. was attached to answer unto Robert Stannard and Sarah his wife, (which said Sarah is administratrix of all and singular the goods, rights, credits, and chattels which were of Robert Debney, her late husband, deceased, at the time of his death, who died intestate,) of a plea of trespass on the case, &c. And thereupon the said R. S. and Sarah his wife, *as administratrix aforesaid*, by Andrew Evans their attorney, complain, that whereas the said Richard *on the thirtieth day of September* in the year of Our Lord 1775, to wit, at Tunstall in the county of Suffolk, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there *delivered* the said note to the said Robert Debney *in his lifetime*; by which said note he the said Richard then and there promised to *pay on demand* to the said R. D. in his lifetime, (by the name of Robert Debney,) the sum of one hundred and ninety two pounds four shillings and fourpence for value received by him the said Richard: by means whereof, and *by force of the statute* in such case made and provided, he the said Richard became liable to pay to the said R. D. in his lifetime, the said sum of money in the said note specified, when he the said Richard should be thereto afterwards requested; and being so liable, he the said Richard, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Tunstall aforesaid, in the county aforesaid, undertook, and faithfully promised the said R. D. in his lifetime to pay him the said sum of money in the said note specified, when he the said Richard should be thereto afterwards requested. (A Count for goods sold and delivered, with quantum meruit.)

Declaration by husband and wife, *Administratrix* of her late husband, on a promissory note given by Defendant to her late husband.

Yet the said Richard, not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. D. *in his lifetime*, and the said Sarah after the death of the said R. D. and *whilst she was sole and unmarried*; to which said Sarah after the death of the said R. D. and whilst she was sole and unmarried, to wit, on the first day of July in the year of Our Lord 1780, at Tunstall aforesaid, in the county aforesaid, administration of all and singular the goods, rights, credits, and chattels which were of the said R. D. deceased, at the time of his death, who died intestate, by John Gooch doctor of divinity, official in and throughout the archdeaconry of Suffolk, lawfully constituted (to whom the commission of administration in that behalf belonged) in due form of law was granted: and the said R. S. and Sarah his wife (which said Sarah is administratrix aforesaid,) *since their intermarriage* in this behalf say, that he the said Richard hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, either to the said R. D. in his lifetime, or to the said Sarah, (as administratrix as aforesaid) after the death of the said R. D. and whilst she was sole and unmarried, or to the said R. S. and Sarah his wife, which said Sarah is administratrix as aforesaid, since their intermarriage, or to any or either of them, although to do this the said Richard was requested by the

Breach.

the said R. D. in his lifetime, and by the said Sarah after the death of the said R. D. whilst she was sole and unmarried, and by the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid) *since their intermarriage*, to wit, on the first day of January in the year of Our Lord 1785, and often both before and afterwards, to wit, at Tunstall aforesaid, in the county aforesaid; but he to do this hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) or to either of them. And whereas the said Richard, after the death of the said R. D. to wit, on the twentieth day of July in the year of Our Lord 1780 aforesaid, at Tunstall aforesaid, in the county aforesaid, accounted together with the said Sarah whilst she was sole and unmarried, of and concerning divers other sums of money before that time due and owing from the said Richard to the said R. D. in his lifetime and at the time of his death, and then being in arrear and unpaid; and upon that occasion, he the said plaintiff was then and there found in arrear and indebted to the said Sarah in the said sum of one hundred pounds of like lawful money of Great Britain; and being so found in arrear and indebted, he the said Richard, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said Sarah, whilst she was sole and unmarried, to pay her the said last-mentioned sum of money, when he the said Richard should be thereto afterwards requested: Yet the said Richard, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sarah whilst she was so sole and unmarried, and the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) since their intermarriage in this behalf, hath not as yet paid the said last-mentioned sum of money, or any part thereof, to them or either of them, although to do this he the said Richard was requested by the said Sarah whilst she was so sole and unmarried, to wit, on, &c. and by the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) since *their* intermarriage, to wit, on, &c. and often both before and afterwards, to wit, at, &c.; but he to do this hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) or to either of them. And whereas the said Richard afterwards, and after the intermarriage of the said Sarah with the said R. S. to wit, on, &c. at, &c. accounted together with the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) of and concerning divers other sums of money before that time due and owing from the said Richard to the said R. D. in his lifetime, and at the time of his death, and then being in arrear and unpaid; and upon that occasion he the said Richard was then and there found in arrear and indebted to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) in the further sum of one hundred pounds

Another Count on an account stated with the wife whilst she was sole.

Account stated with R. D. her late husband in his lifetime.

pounds of like lawful money of Great Britain; and being so found in arrear and indebted, he the said Richard, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) to pay them the said last-mentioned sum of money, when he the said Richard should be thereto afterwards requested: Yet the said Richard, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid) in this behalf, hath not as yet paid the said last mentioned sum of money, or any part thereof, to them or either of them, although to do this he the said Richard was requested by the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) afterwards, to wit, on, &c. and often afterwards, to wit, at, &c. in, &c.; but he to do this hath hitherto wholly refused, and still refuses so to do, to the damage of the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) of one hundred pounds, and therefore they bring their suit: and they bring into court here the letters of administration of the said J. G. which fully prove to the said Court here that she the said Sarah is administratrix in form aforesaid.

Drawn by MR. TIDD.

LONDON, to wit. Herbert, otherwise Hubert van Hamel, late of Westminster in the county of Middlesex, esquire, was attached to answer unto Thomas Odwin, William Firebrace, and George Reed, of a plea of trespass on the case, &c. And thereupon the said Thomas, William, and George, by Samuel Underwood their attorney, complain, that whereas the said Herbert, otherwise Hubert, (1) *on* the twelfth day of November in the year of Our Lord 1784, in certain parts beyond the seas, to wit, *at the island of Barbadoes* in the West Indies, that is to say, in the parish of St. Mary le Bow, in the ward of Cheap, *made* his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there *delivered* the said note to the said T. W. and G.; by which said note he the said H. otherwise H. by the name of Hubert van Hamel, then and there promised to pay, *on the first day of May* then next, (that is to say, on the first day of May in the year of Our Lord 1785,) to the said Thomas, William, and George, (by their names and additions of Messrs. Odwin, Firebrace, and Reed,) or their order, two hundred pounds *currency*, that is to say, two hundred pounds current money of the island of Barbadoes aforesaid, value received: and the said Thomas, William, and George in fact say, that, at the time of the making of the said note, the said two hundred pounds currency therein mentioned, was of a large

Declaration on a promissory note drawn *in parts beyond the seas for* 200*l. currency.*

Payee v. *Maker.*

(1) Str. 22.

Averment of the value of the currency.

large value, to wit, of the value of one hundred and eighty pounds of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid: by means whereof, and by *force of the statute* in such case made and provided, the said Hubert became liable to pay to the said Thomas, William, and George the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, he the said Hubert, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said Thomas, William, and George, to pay the said sum of money in the said note specified, according to the tenor and effect of the said note. (Add the common money Counts.) Yet the said Hubert, not regarding, &c. but contriving, &c. did not, nor would, *on, &c. next after the date of the said note*, pay the said sum of money therein specified, nor hath he at any time since paid the same, or the said several other sums of money, &c. (as usual.)

Str. 22. Rushton v. Aspinall, Doug. 654. Bailey on Bills and Notes, 57.

Declaration by original against an *Executrix* on a promissory note drawn by testator in the *East Indies*, whereby he promised to pay 18 months after the date, or 6 weeks *after his arrival in England*, 50l. *Page* v. *Executrix of Maker*.

MIDDLESEX, to wit. Peter Rum, and Mary his wife, who is executrix of the last will and testament of W. A. deceased, were attached to answer unto R. J. in a plea of trespass on the case. And thereupon the said R. J. complains, that whereas the said W. A. *in his lifetime*, to wit, on, &c. at *Calcutta in the East Indies*, (where the said W. A. was then resident, from whence he intended to come to this kingdom of England,) to wit, at Westminster, in the said county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the day and year aforesaid, and then and there delivered the said note to the said R. J; by which said note he the said W. A. promised to pay to the said R. J. or his order, eighteen months after the date of the said note, *or six weeks after the arrival* of him the said W. A. in England, the sum of fifty-four pounds sterling for value received by him the said W. A.: by reason whereof, and by *force of the statute* in such case made and provided, the said W. A. became liable to pay to the said R. J. the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, he the said W. A in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said R. J. to pay him the said sum of money in the said note specified, according to the tenor and effect of the said note. And the said R. J. avers, that although the said W. A. afterwards, in his lifetime, to wit, on, &c. arrived in England from Calcutta, to wit, at Westminster aforesaid: Yet the said W. A. *in his lifetime*, and the said Peter, and Mary his wife, executrix as aforesaid, *since his death*, not regarding the said promise and undertaking of the said W. A. so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. J. in this behalf, the said W. A. did not *at the end of six weeks after such*

Averment that testator arrived in England;

his

his arrival in England as aforesaid, nor at the end of eighteen months from the date of the aforesaid note, or at any other time whatsoever in his lifetime, pay, nor have the said Peter and Mary his wife, who is such executrix as aforesaid, nor hath either of them, since the death of the said W. A. hitherto paid the said sum of money in the said note specified, or any part thereof, to the said R. J. (although to do this he the said R. J. requested the said W. A. in his lifetime, to wit, at the end and *expiration of the said six weeks* next after his aforesaid arrival in England, and afterwards, and also at the end and *expiration of the said eighteen months* from the date of the said note; and also the said Peter and Mary, executrix as aforesaid, since the death of the said W. A. to wit, on, &c. and often afterwards, to wit, at, &c.) but they, or any or either of them, to do this have, and each of them hath hitherto wholly refused, and the said Peter and Mary his wife, executrix as aforesaid, still refuse so to do; and the said sum of fifty-four pounds in the said note specified, and every part thereof, still remains wholly unpaid to the said R. J. either by the said W. A. in his lifetime, or by the said Peter, and Mary his wife, executrix as aforesaid, since his death, to wit, at, &c. in, &c. And whereas the said W. A. in his lifetime, to wit, on, &c. at C. in the E. I. (where the said W. A. was so, as aforesaid, resident, and from whence he intended to come to England as aforesaid,) to wit, at, &c. in, &c. made, &c. commonly called, &c. his own proper, &c. bearing date the day and year aforesaid, and then and there delivered the said last-mentioned note to the said R. J.; by which said last-mentioned note he the said W. A. promised to pay, &c. &c.: by reason whereof, and by force of, &c. he the said W. A. became liable, &c. And the said R. J. in fact further saith, that although the said W. A. in his lifetime, to wit, on, &c. *arrived in England* from C. aforesaid, to wit, at, &c.; yet the said W. A. in his lifetime, and the said Peter and Mary his wife, executrix as aforesaid, not regarding, &c. but contriving, &c. *did not, at the expiration of six weeks* after his arrival in England, or at any other time whatsoever, pay, nor have nor hath the said Peter and Mary his wife, executrix as aforesaid, or either of them, since his death, paid the said sum of money in the said last-mentioned note specified, or any part thereof, to the said R. J. although to do this he the said R. J. requested the said W. A. in his lifetime, at the end and expiration of six weeks after his aforesaid arrival in England, and afterwards; and also the said Peter and Mary his wife, executrix as aforesaid, since the death of the said W. A. to wit, at, &c. and often afterwards, to wit, at, &c.; but, &c. (as in first Count) And whereas the said W. A. in his lifetime, to wit, on, &c. at Westminster in the said county of Middlesex, made, &c. his own proper, &c. and then and there delivered, &c.; by means of which said last-mentioned note he the said W. A. promised to pay to the said R. J. or order, *eighteen months after the date* thereof, fifty-four pounds sterling for value received by him the said W. A.: by reason whereof, and by force of, &c. became liable,

and request at the expiration of six weeks, and also at the expiration of 18 months.

2d Count on testator's promise six weeks after arrival only.

3d Count, 18 months after date only.

liable, &c.; and being ſo liable, &c. undertook, &c. (Money had and received; inſimul computaſſet; and common concluſion.)

V. LAWES.

Declaration on a promiſſory note, *Payee v. Maker*, where there was a *ſubſcribing witneſs*.

(1) 15. G. 3. c. 51. ſ. 2. 17. G. 3. c. 30. ſ. 2. made perpetual by 27. G. 3. c. 18.

FOR that whereas the ſaid defendant heretofore, to wit, on, &c. (a) *in a certain place called Clifford's Inn*, to wit, at, &c. in, &c. according to the *form of the ſtatute* (1) in ſuch caſe made and provided, made his certain note in writing, commonly called a promiſſory note, bearing date the day and year aforeſaid, and ſigned by him the ſaid defendant *in the preſence of one A. B. a ſubſcribing witneſs*, who, in due manner, and according to the form of the ſtatute in ſuch caſe made and provided, atteſted ſuch ſignature; and *thereby, twenty-one days after the date* of the ſaid note, promiſed to pay to the ſaid plaintiff, (by the name of, &c. *of, &c.* cabinet-maker, being *the then place of abode* of the ſaid plaintiff, *to whom or to whoſe order* the money contained in the ſaid note was to be paid,) or his order, the ſum of four pounds for value received, and then and there delivered the ſaid note to the ſaid plaintiff: by reaſon whereof, and by force of the ſtatute in ſuch caſe made and provided, he the ſaid defendant became liable, &c.; and being ſo liable, &c.

V. LAWES.

(a) The parts in italic are the requiſites by the act for any ſum under five pounds.

Declaration in the Exchequer by the *Aſſignee* of an *inſolvent debtor*, on a promiſſory note, payable by inſtalments.

E. GIBSON, *aſſignee of the debts which were of J. T. an inſolvent debtor*, according to the form of an act of parliament made at Weſtminſter, at the ſeſſion of parliament held at Weſtminſter on the firſt of February in the tenth year of the reign of the lord the preſent king, intitled, "An act for the relief of inſolvent "debtors," cometh before the barons of this Exchequer, on, &c. *in this Term*, by A. B. his attorney, and complains by bill againſt William Caius, preſent here in court *the ſame day*, on a plea of treſpaſs on the caſe; for that whereas the ſaid William, *after the firſt day of May, A. D.* 1705, to wit, on, &c. at, &c. in, &c. made his certain note in writing, commonly called a promiſſory note, with his own hand ſubſcribed, bearing date the ſame day and year laſt mentioned, and the ſame note to the ſaid J. T. then and there *delivered*; and by the ſame note promiſed to pay to the ſaid J. T. by the name of J. T. or order, the *ſum of four pounds* value received, upon demand, as follows, *to be paid quarterly four ſhillings and fourpence a quarter*, till the ſaid ſum of four pounds ſhould be paid: by reaſon whereof, and alſo by *force of the ſtatute* in ſuch caſe made and provided, the ſaid William became liable to pay to the ſaid J. T. the ſaid ſum of money mentioned in the ſaid note, according to the tenor and effect of the ſame note; and being ſo liable, the ſaid William, in conſideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully promiſed the ſaid J. T. to pay him the ſaid ſum of money,

ney, according to the tenor and effect of the said note. And the said E. G. further says, that the said J. T. was actually a prisoner in the gaol of the said town and county, at the suit of the said E. G. on the first of January 1736, and so continued until the time of his discharge hereafter mentioned; and that by virtue of the said act of parliament, at the general quarter sessions of the peace held at the town of, &c. by adjournment, in and for the said town and county of the said town, on, &c. before A. B. and others their companions, his majesty's justices assigned to keep the peace in and for the said town and county, and also to hear and determine divers felonies, trespasses, and other offences committed in the said town and county, he the said J. T. was duly discharged, according to the said act of parliament: and the said E. G. further says, that eight shillings and eightpence, parcel of the said sum of four pounds last mentioned, and no more, was paid to the said J. T. before his said discharge, and that the residue of the said debt, immediately after the discharge of the said J. T. became and was vested by virtue of the said act of parliament in J. D. gentleman, then, and from thenceforth hitherto, being clerk of the peace of and for the said town and county; and the said residue of the said debt, being three pounds eleven shillings and fourpence, or any part thereof, not being paid, afterwards, that is to say, on, &c. the said residue of the said debt, by virtue of the said act of parliament, was duly assigned by the said J. D. then being clerk of the peace of and for the said town and county, to the said E. G. according to the said act of parliament, that is to say, at the town and county aforesaid; whereof the said W. afterwards, to wit, on, &c. there had notice; whereby, and by reason of the premises, the said William became liable to pay the said residue of the said debt at the times appointed by the said note for the payment thereof: and although the said William, by reason of the premises, ought to have paid to the said E. G. *before the tenth day of May* 1740, one pound ten shillings and fourpence, part of the said three pounds eleven shillings and fourpence; yet the said William, not regarding his said promise so made as aforesaid, but contriving, &c. the said E. G. in this behalf, hath not paid to the said E. G. the said sum of one pound ten shillings and fourpence, part of the said three pounds eleven shillings and fourpence, or any part thereof, although often requested, &c. And whereas also the said William, on, &c. at, &c. was indebted to the said E. G. as assignee in form aforesaid, in the further sum of fifty pounds for money received to his use, yet, &c.

Averment that the payee was actually in custody, on, &c. and on an adjournment day of sessions; was duly discharged; and that 8s. 8d. only (part) was paid to him whilst such prisoner; that the residue was *assigned* to the *clerk of the peace*.

One of the instalments due.

Count by assignee for money had and received.

FOR that whereas, on, &c. at, &c. one A. B. was *cashier and servant* of the Royal African Company, and by the said company then and long before that time usually intrusted to make and *sign* promissory notes for and on behalf of the said company; and the said A. B. so being servant and intrusted as aforesaid, he the said A. B. on, &c. at, &c. for the said company made a certain promissory

Declaration on a promissory note by *Payee*, *given by the cashier of a company*.

promissory note, bearing date on the same day and year last mentioned, with the hand and name of the said A. B. thereto subscribed; and by the said note the said A. B. did acknowledge *to have borrowed and received* of the said P. the sum of seven hundred pounds *for the use of the said company*, by the name of The Royal African Company of England, to be *repaid with interest on demand:* by reason whereof, and also by *force of the statute* in such case made and provided, the said company became liable to pay to the said P. the said sum of money contained in the said note; and being so liable, the said company, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said P. to pay him the said sum of money in the said note contained, according to the tenor and effect of the said note.

Præcipe for declaration by original on a promissory note at the suit of *Executors.*

LONDON, *ss.* If W. P. and R. E. executors of the last will and testament of the deceased, make you secure, then put, &c. R. B. late of, &c. that he be before our lord the king from the day of Easter, in fifteen days, wheresoever, &c. to shew, &c. for that whereas the said R. B. in the lifetime of the said H. S. to wit, on, &c. made and issued his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and thereby to have acknowledged to have borrowed and received of the said H. S. (by the name of Mr. H. S.) two hundred pounds, which he the said R. B. by his said note then and there promised to pay unto the said H. S. and then and there delivered the said note to the said H. S.: whereby, and by means of which said several premises, and by force of the statute in such case made and provided, the said R. B. became liable to pay to the said R. S. in his lifetime the said sum of money in the said note specified, when he should be thereto afterwards requested; and being so liable, he the said R. B. in consideration thereof, afterwards, in the lifetime of the said H. S. to wit, on, &c. undertook, &c. the said H. S. to pay him the said sum of money in the said note specified, when he should be thereto afterwards requested. (2d Count, money lent and advanced; 3d Count, had and received; account stated; and following conclusion.) Yet the said R. B. not regarding his said promise and undertaking so made by him as aforesaid, but contriving, &c. the said W. S. in his lifetime, and the said P. and E. executors as aforesaid, since his death, in this behalf, hath not paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said H. S. in his lifetime, or to the said P. and E. executors as aforesaid, or either of them, since his death, although to pay the same he the said R. B. was requested by the said H. S. in his lifetime, to wit, on, &c. and by the said P. and E. since his death, to wit, at, &c. but he so to do hath wholly refused and neglected, and still refuses to pay the same to the said P. and E. executors as aforesaid, to the damage of them the said P. and E., as such executors, of one hundred

dred and sixty pounds, as it is said. (In declaring on this original, there must be a *profert* of the executors testamentary at the end of the declaration.)

Declaration in the Palace Court upon a promissory note that was to be paid by monthly instalments where the first had been paid and no more. 2d *Indorsee* v. *Drawer*.

G. P. by C. H. his attorney, complains against J. E. in a plea of trespass on the case, &c. for that whereas the said J. E. on, &c. at, &c. and *within the jurisdiction of this court*, by the name of J. E. made and signed his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there promised to pay to one J. B. in the said note mentioned, or order, nine pounds for value received, in manner and under the condition following, that is to say, by and at the rate of two pounds two shillings in every month, monthly, until the whole should be discharged; and, in case of non-payment in any of the monthly instalments, the said note to be in force, and then and there delivered the said note to the said J. B.; and the said J. B. to whom or to whose order the payment of the said sum in the said note specified was to be made, afterwards, and before the payment of the said sum of nine pounds or any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed the contents of the said note to be paid to one J. B. H. and then and there delivered the said note so indorsed to the said J. B. H.; and the said J. B. H. to whom or to whose order the said sum of nine pounds in the said note mentioned was by virtue of the said indorsement so made thereon as aforesaid to be paid, afterwards, and before the payment of the said sum of nine pounds or of any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed the contents of the said note to be paid to the said G. P. and then and there delivered the said note, so indorsed as aforesaid, to the said G. P.; of which said several indorsements so made on the said note as aforesaid, he the said J. E. afterwards, to wit, on, &c. had notice: whereby, and by reason of which said several premises, and by force of the statute in such case made and provided, the said J. E. became liable to pay to the said G. P. the said sum of nine pounds in the said note mentioned, according to the tenor and effect of the said note, and the aforesaid indorsements thereof; and being so liable, he the said J. E. in consideration thereof, afterwards, to wit, on, &c. undertook, &c. the said G. P. to pay the said sum of nine pounds in the said note mentioned, according to the tenor and effect of the said note, and the aforesaid indorsements thereof. And the said G. P. in fact further says, that although the said J. E. paid the sum of two pounds two shillings, parcel of the said sum of nine pounds, and the first of the said monthly instalments in the said note mentioned, according to the tenor and effect of the said note: yet the said G. P. in fact further says, that after the said sum of two pounds two shillings had been and was so paid as aforesaid, and before the levying of the plaint of the said G. P. to wit, on, &c. two pounds two shillings of the residue of the said sum of

 nine

nine pounds in the said note specified, for the second of the said monthly instalments in the said note mentioned, becoming due and payable on, &c. became due, and was due and payable from the said J. E. to the said G. P. but that the said J. E. did not then and there pay the same, or any part thereof, to the said G. P. but then and there failed and made default therein, contrary to the tenor and effect of the said note; whereby the said note then and there became in force as to the whole of the then residue of the said sum of nine pounds therein specified; and such residue being a large sum of money, to wit, the sum of six pounds eighteen shillings, became and was forthwith due and payable from the said J. E. to the said G. P. to wit, at, &c. And whereas the said J. E. on, &c. and within, &c. by the name of J. E. made, &c. called, &c. bearing date, &c. and then and there promised to pay to the said J. B. or order nine pounds for value received, in manner and under, &c.; and in case of non-payment of any monthly instalment, the said last-mentioned note to be in force, and then and there delivered, &c.; and the said J. B. to whom, &c. was to be made, afterwards, and before the payment of the said sum of nine pounds in the said note specified, or of any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed, &c. and then and there delivered the said note so indorsed to the said J. B. H.; and the said J. B. H. to whom, &c. afterwards, and after the payment of the first monthly instalment of two pounds two shillings therein specified, but before the payment of the residue of the said sum of nine pounds therein mentioned, being the sum of six pounds eighteen shillings, or of any part thereof, to wit, on, &c. indorsed the said last-mentioned note, and by that indorsement appointed the residue of the said sum of money, in the said last-mentioned note specified, to be paid to the said G. and then and there delivered the said last-mentioned note, so indorsed as aforesaid, to the said G. P.; of which said several indorsements so made on the said last-mentioned note as aforesaid, the said J. E. afterwards, to wit, on, &c. had notice: whereby, and by reason of which said several premises, and by force of the statute in such case made and provided, the said J. E. became liable to pay to the said G. P. the said residue of the said sum of money in the said note mentioned, according to the tenor and effect of the said last-mentioned note, and of the aforesaid indorsements thereof; and being so liable, he the said J. E. in consideration thereof, afterwards, to wit, on, &c. undertook, &c. the said G. P. when, &c. to pay him the said residue of the said sum of money in the said last-mentioned note mentioned, according to the tenor and effect of the said last-mentioned note, and the aforesaid indorsements thereof. And the said G. P. in fact further says, that although the said sum of two pounds two shillings for the second of the said monthly instalments in the said last-mentioned note specified, became and was due and payable from the said J. E. upon the said twenty-ninth day of, &c.; yet the said J. E. did not then and there pay the said instalment or sum of two pounds two shillings, or any part thereof,

2d Count, stating second indorsement to be made after first monthly payment made.

thereof, to the ſaid G. P. but then and there failed and made default, contrary to the tenor and effect of the ſaid laſt-mentioned note; whereby the ſaid laſt-mentioned note became in force as to the whole of the then reſidue of the ſaid ſum of nine pounds therein ſpecified, and ſuch reſidue became and was forthwith due and payable from the ſaid J. E. to the ſaid G. P. to wit, at, &c. whereof the ſaid J. E. afterwards, to wit, on, &c. had notice. (Add the common Counts; account ſtated; and common concluſion.)

Præcipe for declaration by original on a *Banker's cheque*, &c. which was given by the defendant to one A.B. or bearer; A.B. transferred it over to plaintiff, who preſented it for payment, but was refuſed, &c.

LONDON, *ſſ.* If Iſaac Linds make you ſecure, &c. then put, &c. Stephen Child, late of, &c. that he be before our lord the king on, &c. whereſoever to ſhew, &c. for that whereas heretofore, to wit, on, &c. at, &c. according to the cuſtom of merchants, made and drew his certain bill of exchange, bearing date the day and year aforeſaid, upon certain perſons trading and uſing commerce by and under the ſtyle and firm of Sir Thomas Halifax and Co. and by the ſaid bill then and there requeſted the ſaid perſons ſo uſing the ſaid ſtyle or firm of, &c. to pay to one J.D.G. in the ſaid bill named, by the name of, &c. or bearer, 50l. and then and there delivered the ſaid bill, draft, or order to the ſaid J. D. G.; and the ſaid J. D. G. to whom, or to the bearer of which ſaid *bill*, *draft*, *or order*, payment of the ſaid ſum of money in the ſaid bill, draft, or order ſpecified was to be made as laſt aforeſaid, afterwards, and before the payment of the ſaid ſum of money in the ſaid bill, draft, or order mentioned, or of any part thereof, to wit, on, &c. at, &c. according to the cuſtom of merchants in that particular, delivered the ſaid bill, draft, or order to the ſaid plaintiff for a certain valuable and good conſideration then and there by him paid and given, and conſtituted and appointed him the bearer of the ſaid bill, draft, or order as aforeſaid, to recover the ſaid ſum of money therein mentioned, as ſuch bearer thereof. And the ſaid plaintiff in fact further ſaith, that being ſuch bearer of the ſaid bill, draft, or order as aforeſaid, he the ſaid plaintiff afterwards, to wit, on, &c. in due manner preſented the ſaid bill, draft, or order, to the ſaid perſons ſo uſing the ſaid ſtyle or firm of, &c. for payment of the money therein mentioned, unto him the ſaid plaintiff, and they were then and there required to pay the ſame to the ſaid plaintiff as ſuch bearer of the ſaid bill, draft, or order as aforeſaid, according to the tenor of the ſaid bill, draft, or order: but the ſaid plaintiff avers, that the ſaid perſons ſo uſing, &c. did not, nor would any or either of them, when the ſaid bill, draft, or order was ſo ſhewn and preſented to them as aforeſaid, or at any other time whatſoever, pay the ſaid ſum of money therein ſpecified, or any part thereof, to him the ſaid plaintiff, but, on the contrary thereof, then and there refuſed ſo to do, and therein wholly failed and made default; whereof the ſaid defendant afterwards, to wit, on, &c. had notice: by reaſon whereof, and of the ſeveral other premiſes aforeſaid, and by force of the cuſtom and law of merchants,

* Of a Banker's Cheque.

chants, the said defendant became liable, &c.; and being so liable, &c. &c. And whereas heretofore, to wit, on, &c. according to the custom of, &c. made, &c. a certain *draft or order* for the payment of money, commonly called a *banker's cheque*, bearing date, &c. upon certain *bankers* then and there trading and using commerce by and under the style of, &c. and by the said draft or order then and there required the said bankers so using, &c. &c. to pay to the said J. D. G. by the name of, &c. &c. (Go on with this Count same as the last, only omitting the word "*bill*." Add all the common Counts.)

2d Count.

I Have drawn the above *præcipe* according to my instructions, and considered the case; and however hard it may be on the plaintiff, yet I am of opinion the action cannot be supported; for on looking into the *stock-jobbing* act of the 7. G. 2. c. 8. s. 1. all such contracts as that on which the cheque is suggested to have been given are declared to be absolutely *void*, and not merely *voidable*, and that to all intents and purposes whatever: being therefore so void in itself, and that to every purpose, it was incapable of any transfer or delivery over, so as to put the person to whom it was so *delivered* in a better or other situation than he in whose favour it was originally drawn, and who afterwards delivered it over. Were the point quite a new one, however, the argument made use of in the instructions might be urged with much propriety, and of course with a prospect of success; but I fear the recent case of Lowe and others and Waller, Doug. 708. and the recognised one of Bowyer and Bampton, 2. Str. 1155. on the statute of usury and gaming, and in which a note or bill on either of those considerations are declared to be invalid, even in the hands of *innocent indorsees*, on good and *bonâ fide* considerations, will be considered as determining the question. Indeed, in my own opinion, they do; but then there is generally so great a difficulty in making out a case of the kind in evidence, that it may be perhaps worth the plaintiff's while to take the chance which a case of the sort may afford him; but if, on the other hand, the draft can be clearly shewn to have been given on such illegal consideration, then I cannot advise the proceeding on it: at all events, however, he is not without his remedy against J. D. G. or the person from whom he received the cheque, but may recover back the consideration money for it, in an action for money had and received. V. LAWES.

Declaration at suit of the husband alone upon a promissory note made to the wife whilst sole, but payable by instalments at a time happening after the marriage, for five out of seven of the instalments accrued during the marriage.

WARWICKSHIRE, to wit. John Whittaker complains of Samuel Hill, being, &c. in a plea of trespass on the case, &c. for that whereas the said Samuel heretofore, to wit, on the twenty-fifth day of March in the year of Our Lord 1788, at Birmingham in the county of Warwick, made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, and bearing date the day and year aforesaid, and thereby promised to pay to one Sarah Toy, by the name and description of Mrs. S. T. ten pounds ten shillings, at different instalments, that is to say, one guinea at the end of every three months from the date thereof, until the whole sum should be paid, for value received, and then and there delivered the said note to the said Sarah Toy; by reason whereof, and by force of the statute in that case made and provided, the said Samuel became liable to pay to the said S. T. the said sum of money in the said note mentioned, according to the tenor and effect of the said note. And the said John in fact says, that after the making of the said note, and before the

the whole of the money therein mentioned became payable, to wit, on the thirty-first day of October in the year aforesaid, to wit, at B. aforesaid, in the county aforesaid, he the said John intermarried with the said S. T. who then and there became, and was and still is, the lawful wife of him the said John; and he the said John then and there became and was and yet is lawfully possessed of the said note. And the said John further says, that after his said intermarriage, and before the exhibiting of the bill of the said John, to wit, on the twenty-fifth day of December in the year of Our Lord 1790, at B. aforesaid, in the county aforesaid, a great part of the said sum of money in the said note specified, to wit, the sum of five pounds five shillings, for five of the said instalments in the said note mentioned, accrued since the said intermarriage, and was due and payable from the said Samuel upon and according to the tenor and effect of the said note; of which said premises the said Samuel then and there had due notice: whereby, and by reason of which said several premises, he the said Samuel became liable to pay to the said John the said sum of five pounds five shillings; and being so liable, he the said Samuel, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and faithfully promised the said John to pay him the said sum of money, when he the said Samuel should be thereto afterwards requested. And whereas the said Samuel heretofore, to wit, on the twenty-fifth day of March in the year of Our Lord 1788, at B. aforesaid, in the county aforesaid, made his certain other note in writing, commonly called a promissory note, subscribed with his own proper hand, and bearing date the day and year last aforesaid, and thereby promised to pay to the said S. T. by the name and description of Mrs. S. T. ten pounds ten shillings, at different instalments, that is to say, one guinea every three months from the date thereof until the whole should be paid, for value received, and then and there delivered the said last mentioned note to the said S. T.; by means whereof, and by force of the statute in such case made and provided, the said Samuel became liable to pay to the said S. the said sum of money in the said note specified, according to the tenor and effect thereof. And the said John in fact says, that after the making of the said last mentioned note, and before the said sum of money therein mentioned became due, according to the tenor and effect thereof, to wit, on the said thirty-first day of October in the said year of Our Lord 1788, at B. aforesaid, in the county aforesaid, he the said John intermarried with the said S. T. who then and there became, and was and still is, the lawful wife of the said John. And the said John in fact further saith, that after his said intermarriage, and before the exhibiting of the bill of the said John, to wit, on the day of in the year of Our Lord 17 at B. aforesaid, in the county aforesaid, divers, to wit, of the said instalments in the said last mentioned note specified,

2d Count on a promise to pay the husband all the arrears in consideration of forbearance.

If there has been any promise of payment by the defendant, fill this blank with the day on which the preceding instalments became due. If not, it may be filled with the day when the 5th instalment became due.

cified, became due and payable, according to the tenor and effect of the said note; whereof the said Samuel then and there had notice: in consideration whereof, and also in consideration that the said John would then and there *forbear and give day of payment* to the said Samuel for the same for a reasonable time, he the said S. undertook, and then and there faithfully promised the said John to pay him the said several instalments so become due as aforesaid. And the said John in fact says, that he, confiding in the said last mentioned promise and undertaking of the said Samuel, did thereupon forbear and give day of payment to the said S. for the said several instalments, amounting in the whole to a large sum of money, to wit, the sum of pounds, for a long and reasonable time, to wit, from the time of making the said last mentioned promise and undertaking till the time of exhibiting the bill of the said John in this behalf, to wit, at B. aforesaid, in the county aforesaid, &c. (Counts for money had and received; money paid; account stated; and common conclusion.)

Now that I have drawn this declaration, I cannot help feeling a little dubious as to the strict propriety of the form of action. I have carefully contrasted it with all the cases to be found on the point, and find that it goes further than any of them, in *attempting to support a demand by the husband alone, upon an actual contract made with the wife* BEFORE *the marriage, without any express promise to the husband* AFTER. In all the authorities I have met with, where the husband has sued alone on a contract with the wife whilst sole, he has alledged an express promise to himself after the marriage, founded on the former. But we have here attempted to raise an *implied assumpsit* in law to the husband alone out of a security given to the wife before coverture, on the ground of its not being payable till after. This reason for it may be given, that by the marriage the security vests in possession in the husband alone, and the money not becoming due till afterwards, connects the action with the thing on which it founds itself, now the husband's sole property, and thereby gives him an election to sue alone. In this I think there is something like law, but it is perfectly new, and unsupported by decisions; for which reason I have added a 2d Count, stating a promise to the husband in consideration of *forbearance*; which, if supported by *evidence*, will be good; if not, and plaintiff should obtain a verdict without any objection being taken in pleading to the first Count, I would advise him to enter up his judgment on the Count for money had and received. T. BARROW.

Declaration against Administrator (during the minority of the intestate's infant son) on a promissory note. (*Intestate Payee v. Drawer.*)

SOMERSETSHIRE, to wit. John James, administrator of all and singular the goods, chattels, and credits which were belonging to Betty James deceased, at the time of her death, who died intestate during the minority of John James, an infant, complains of Charles Symes, being in the custody, &c. for that whereas the said Charles Symes, in the lifetime of the said Betty James, to wit, on the thirty-first day of August in the year of Our Lord 1784, at Radstock in the county of Somerset aforesaid, made his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there delivered the said note to the said Betty James; by which said note the said Charles Symes promised to pay to the said Betty James, by the name and description of Mrs. Betty James, or order, the

sum

sum of four hundred and thirty-seven pounds, with interest for the same, after the rate of three pounds fifteen shillings in the hundred pounds by the year, for value received; by reason whereof, and by force of the statute in such case lately made and provided, the said Charles Symes became liable to pay to the said Betty James the said sum of money, with the interest in the said note contained, when he the said Charles Symes should be thereto afterwards requested; and being so liable, he the said Charles Symes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Radstock aforesaid, in the county aforesaid, undertook, and to the said Betty James then and there faithfully promised to pay her the said sum of money, with the interest for the same, in the said note contained, when he the said Charles Symes should be thereunto afterwards requested. And whereas also the said Charles Symes, afterwards, in the lifetime of the said Betty James, to wit, on the same day and year aforesaid, at, &c. aforesaid, was indebted to the said Betty James in other one thousand pounds, of, &c. for the *use and occupation* of several closes of ground, to wit, fifty acres of land, fifty acres of meadow, and fifty acres of pasture, with the appurtenances, of the said B. J. situate, lying, and being in the parish of R. aforesaid, in the county aforesaid, by the said C. S. and at the special instance and request of the said C. S. by the permission of the said B. J. for a long time, before that time, had, held, used, occupied, possessed, and enjoyed; and being so indebted, &c. undertook, &c. to pay her the said *last mentioned* sum of money, when, &c. (*Quantum meruit* for the use and occupation of fifty *other* acres of land, fifty *other* acres, &c.; and that the said C. S. by virtue of the said *last mentioned permission*, &c. had held, &c. Counts for money lent, and on account stated, same as for use and occupation.) And whereas also the said C. S. afterwards, and after the death of the said Betty James, to wit, on the tenth day of May A. D. 1793, at R. aforesaid, in the county aforesaid, was indebted to the said John James, as such *administrator* as aforesaid, in other one thousand pounds, of like, &c. for the use and occupation of several other closes of ground, to wit, fifty acres of other land, &c. &c. of the said *John James*, as such *administrator* as aforesaid, situate, &c. by the said C. S. at the special instance, &c. of the said C. S. by the permission of the said *John* James as such *administrator* as aforesaid, for a long time, before that time, had, held, &c. and being so indebted, &c. undertook to the said *John* James, as such *administrator* as aforesaid, then and there, &c. [Count on a *quantum meruit.*] Yet the said C. S. hath not paid the said several sums of money, or any part thereof, either to the said *B.* J. in her lifetime, or to the said John James, *the plaintiff*, since the death of the said *Betty* James, (to which said John James, *the plaintiff*, *administration* of all and singular the goods and chattels, rights and credits, which were belonging to the said Betty James at the time of her death, [illegible] on the twentieth day of March A. D. 1792, at R. aforesaid, in the county aforesaid,

2d Count for *use and occupation* during the *Intestate's lifetime.*

Quantum meruit.

For use and occupation, and on *quantum meruit* in *Administrator's own right.*

Conclusion by administrator *durante minoritate* of an infant.

faid, by Charles by divine permiffion bifhop of Bath and Wells, in due form of law, was granted, during the minority of the faid *John James the minor*,) although fo to do the faid C. S. afterwards, by the faid B. J. in her lifetime, and by the faid John James, the plaintiff, after the death of the faid Betty James, was duly requefted; but to pay the fame to them, or either of them, the faid C. S. hath hitherto wholly refufed, and ftill doth refufe: whereupon the faid J. J. faith that he is injured, and hath fuftained damage to the amount of two thoufand pounds, and therefore he brings his fuit, &c. And he brings here into court the letters of adminiftration of the faid bifhop, which fufficiently prove to the Court here the granting of adminiftration aforefaid to the faid J. J. *the plaintiff* in form aforefaid, the date whereof is the fame day and year in that behalf aforefaid: *with this*, that the faid J. J. will verify, that the faid J. J. the minor above named is ftill within the age, to wit, at R. aforefaid. Pledges, &c.

Profert.

Averment.

V. GIBBS.

BY FIRST INDORSEE.

Indorfee againft the *Indorfer*.

(1) Ann. 288.

(2) Lord Raym. 362. 12. Mod. 212.

FOR that whereas one *A. B.* (the drawer,) heretofore, to wit, on the fourth day of December, A.D. 1789, at, &c. made and figned his certain note in writing, commonly called, &c. bearing date, &c. and thereby promifed to pay to the faid *C. D.* (the payee, indorfor, and defendant) by the name of, &c. (1), or order, &c. and then and there *delivered* the faid note to the faid C. D.; and the faid C. D. (*a*) *to whom* or to whofe order the faid fum of money in the faid note fpecified was to be paid, afterwards, and before the payment of the faid fum of money, or of any part thereof (*b*), to wit (2), on the (*c*) day and year aforefaid, at, &c. aforefaid,

(*a*) When the note is payable (d) *to the order* of the indorfer merely, and not *to him or order*, you omit the words *to whom*, as being inconfiftent with the tenor of the note.

(*b*) We frequently find this allegation carried further than it is here by the averment of the (e) indorfement's being made "before the expiration of the time appointed for payment of the note;" but it is neither neceffary nor prudent to declare fo. It feems to have arifen, however, from a notion, that a note *cannot* (f) *be indorfed* after the day of payment. For any unfair purpofes, as to deprive the drawer of the benefit of a fet-off, and the like, it certainly cannot; but if the negociation be *bona fide*, and in the ordinary courfe of trade, it may. The imprudence of declaring with the averment in queftion arifes from its frequent variance from the fact, which, according to the opinion of Holt, (in an action on bill of exchange,) is fatal (g). See Cunningh. Law of Bills, &c. 83, 4. By declaring generally, (as is here done,) the time of the indorfement is immaterial; *but by declaring with the averment in queftion, it is rendered otherwife.*

(*c*) As the time of the indorfement is immaterial, except when plaintiff confines himfelf by the allegations alluded

(d) Carth. 403. [illegible] Show. 8.

(e) Doug. 496, where one indorfes a note before fum and time of payment mentioned in note. [illegible]

(f) See 3. T. Rep 80 83. n. a. [illegible]

(g) Jackfon and Pigot, 1. Ld. Raym. 364. S. C. 1. Salk. 127. Carth. 459. 12. Mod. 211. Decided contra by Lord Kenyon at N. P. 1789.

aforesaid, *indorsed* the said note, and by that indorsement appointed the money in the said note specified to be paid to the said *E. F.* (the plaintiff and indorsee,) and then and there *delivered* the said note, so indorsed, to the said E. F.: and the said E. F. avers *(d)* that at *the (e) end and expiration of the time appointed for payment of the money in the said note specified*, to wit, on the *(f)* (3) day of in the year aforesaid, at, &c. aforesaid, the said note was shewn (4) and *presented* to the said *A. B.* (the drawer,) for payment of the money therein mentioned; and he was then and there requested to pay the same to him the said *E. F.* (the plaintiff and indorsee,) according to the tenor and effect of the said note, and of the said indorsement so thereon made as aforesaid; but the said *A. B.* (the drawer) did not, when the said note was shewn and presented to him as aforesaid, nor at any other time whatsoever, pay the money therein mentioned, or any part thereof, to him the said *E. F.* (the plaintiff,) but wholly refused so to do, and therein wholly failed and made default; whereof the said C. D. (defendant and indorsee) afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, had notice; and thereby, and by reason of the several other premises aforesaid, and by force of the statute, &c. became liable to pay, &c. *when he should be thereto afterwards requested*; and being so liable, &c. (Assumpsit accordingly.)

Indorsement. Doug. 611.

(3) Rushton *v.* Aspinall, Doug. 654.; and see cases on presentment, ante pages

(4) and Rumball *v.* Ball, 10. Mod. 38. 2. Show. 180. Bailey on Bills, &c. 59.

to in the note (*d*), so you may state it to have been made on the day of the date of the note; but if you declare on an indorsement made after the day of payment, you must of course vary the day, and lay it some time subsequent to such period.

(*d*) This averment is absolutely *material*, as defendant only undertook to pay upon the default of the drawer, and it is equally necessary, whether the indorsement be *after* the day of payment or *before*.

(*e*) If the declaration be on an indorsement made *after* the day of payment, you may vary this expression, and state the presenting the note to be *after the making of the indorsement*, and not at the end of the time appointed, &c. to wit, on the day and year last aforesaid.

(*f*) The day when the note became due, *including the three days of grace*, (h) are not, it should seem, demandable in right in the case of promissory notes; but as the custom is to give them, and the facts of the case are consistent with the allegation, so we recognize it in pleading.

(h) Appleton v. Sweetapple, B. R. M. 23. G. III. Str. 416. 1175. 248. 415, 416. 910. Ld. Raym. 928. Salk. 132. Bl. 1. Ld. Raym. 743. 1076. 2. Bl. Com. 469.

FOR that whereas the said C. D. to wit, on the fifteenth day of September A. D. 1789, at Westminster in the county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to E. F. and G. being then and there *partners and joint dealers* together in the way of their trade and commerce; by which said note he the said C. D. then and there promised to pay after the date thereof, to the said E. F. and G. (by the name and addition of Messrs. E. F. and G.) or their

1st *Indorsee* against *Maker* on a note payable *to three partners*, and indorsed by *one* of them.

joint

joint order, the ſum of eighty pounds, for value received; and the ſaid *E. for himſelf, and the ſaid F. and G. his ſaid partners,* to which ſaid E. and F. and G. or their joint order the payment of the ſaid ſum of money, in the ſaid note ſpecified, was by the ſaid note to be made, after the making the ſaid note, and before the payment of the ſaid ſum of money in the ſaid note ſpecified, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, *indorſed* the ſaid note, *his* own proper hand writing being to ſuch indorſement ſubſcribed; by which ſaid indorſement he the ſaid E. for himſelf, and the ſaid F. and G. his ſaid partners, then and there ordered and appointed the ſaid ſum of money, in the ſaid note ſpecified, to be paid to the ſaid A. B. and then and there *delivered* the ſaid note, ſo indorſed as aforeſaid, to the ſaid A. B.; of which ſaid indorſement ſo made on the ſaid note as aforeſaid, the ſaid C. D. afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, had notice: by means whereof, and by force of the ſtatute in ſuch caſe made and provided, he the ſaid C. D. became liable to pay to the ſaid A. B. the ſaid ſum of money in the ſaid note ſpecified, according to the tenor and effect of the ſaid note, and of the ſaid indorſement ſo made thereon as aforeſaid; and being ſo liable, he the ſaid C. D. in conſideration thereof, afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, undertook, and then and there faithfully promiſed the ſaid A. B. to pay him the ſaid ſum of money in the ſaid note ſpecified, according to the tenor and effect of the ſaid note, and of the ſaid indorſement ſo made thereon as aforeſaid.

Indorſement.

Declaration in the Borough Court on a promiſſory note to be paid by inſtalments, *In-[illegible] v. Maker.*

CHARLES CHAUNGBOLD, by A. Muſgrave his attorney, complains of Richard Lewis of a plea of treſpaſs on the caſe; for that whereas the ſaid Richard Lewis, on the twentieth day of April in the year of Our Lord 1774, at the borough of Southwark in the county of Surrey, *and within the juriſdiction of this court*, made his certain note in writing, commonly called a promiſſory note, ſubſcribed with his own proper hand, bearing date the ſame day and year aforeſaid, and then and there *delivered* the ſaid note to one Joſeph Waldron, and thereby then and there, on demand, promiſed to pay to the ſaid Joſeph, or order, the *ſum of three pounds*, for value received by the ſaid Richard, the ſame to be paid at one ſhilling and ſixpence by the week, from the date of the ſaid note, but, in neglect of any one payment of the ſaid note, *to be on demand*; and the ſaid Joſeph, to whom or to whoſe order the payment of the ſaid ſum of three pounds in the ſaid note mentioned was to be made, afterwards, and before the payment of the ſaid ſum of money mentioned in the ſaid note, or of any part thereof, to wit, on, &c. at, &c. within, &c. *indorſed* the ſaid note, his own proper hand being thereto ſubſcribed, and thereby then and there appointed the contents of the ſaid note, ſo indorſed, to be paid to the ſaid Charles; whereof the ſaid Richard then and there had notice: and by reaſon whereof, and by force of the ſtatute in

Indorſement.

that

that case made and provided, the said Richard became liable to pay to the said Charles the said three pounds contained in the said note, according to the tenor and effect of the said note; and being so liable, he the said Richard, in consideration thereof, afterwards, to wit, on, &c, at, &c. *within*, *&c.* undertook, and then and there faithfully promised the said Charles to pay him the said sum of money contained in the said note, according to the tenor and effect of the said note. And the said Charles in fact says, that the said Richard did not pay to the said Joseph before the said indorsement, or to the said Charles since the said indorsement, the first payment of one shilling and sixpence, which became due by virtue of the said note, *on the sixth day of May* in the year aforesaid, &c. *within*, &c. but therein then and there wholly failed and made default, whereby the said whole three pounds mentioned in the said note, then and there became due and payable at, &c. *within*, &c.; of all which said premises the said Richard afterwards, to wit, *on the seventh day of May*, at, &c. *within*, *&c.* had notice, and was then and there required by the said Charles to pay him the said whole three pounds, mentioned in the said note, and which the said Richard then and there ought to have done, according to the tenor and effect of the said note, and of his promise and undertaking aforesaid: yet the said Richard, not regarding, &c. but contriving, &c. hath not yet paid, &c. (although, &c.) but to pay the same to the said Charles hath hitherto wholly refused, and still refuses. (Another Count on the note in the common way; money had and received; and common conclusion to the two last Counts.)

Before the Mayor and Aldermen in the Chamber of the Guildhall of the City of London.

Declaration in the City Court by an *Indorsee* against the *Husband and Wife* on a promissory note, made *by the wife as a sole trader, according to the custom of London.*

JOHN HENRY BROME, by A. B. his attorney, complains against G. F. and M. his wife, (which said M. *doth sell merchandize*, and trade with merchandize in the art of a milliner within the city of London,) in a plea of trespass on the case; for that whereas, on, &c. at, &c. the said M. (*then and now being the wife of the said G. F. and then and now trading and merchandizing within the said city, in the art aforesaid, alone, and without her said husband, according to the custom of the said city,*) made her certain note in writing, commonly called a promissory note, subscribed with her own proper hand, and bearing date the same day and year aforesaid, and then and there *delivered* the said note to one W. S. by which said note the said M. six months after the date of the said note, promised to pay to the said W. S. by the name of, &c. or order, the sum of twenty-two pounds value received; and the said twenty-two pounds being wholly unpaid, he the said W. S. on, &c. at, &c. by a certain *indorsement* in the said note by him made, and with his own proper hand thereto subscribed, ordered and appointed the contents of the said note to be paid to the said plaintiff, and then and there *delivered* the said note, so indorsed, to the said plaintiff; whereof the said M. afterwards, to

Indorsement.

wit,

wit, on, &c. at, &c. had notice by means of which premises, and also by force of the statute in such case made and provided, the said M. became liable to pay to the said plaintiff the said twenty-two pounds in the said note mentioned, according to the tenor and effect of the said note, and the said indorsement so made thereon as aforesaid; and being so liable, she the said M. &c. undertook, &c.

3 Blackstone, Rep. 574. it is said by Lord Mansfield, "Any action that is brought against the wife by her creditors must be in the City Courts." But the custom being a good one, use may be made of it in any court in the kingdom.

By Indorsee, where the Executrix of Payee indorsed after testator's death.

LONDON, to wit. G. H. complains of R. L. being, &c.; for that whereas the said R. L. on, &c. at, &c. in, &c. made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year aforesaid, and then and there delivered the said note to one A. B. and thereby, four months after date, promised to pay to the said A. B. (by the name of, &c.) or order, the sum of six pounds; and the said A. B. to whom or to whose order the payment of the said sum of money mentioned in the said note was to be made, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. died, having first made his last will and testament in writing, and thereby appointed his wife *M. B. executrix* thereof, and the said sum of money mentioned in the said note being wholly unpaid, she the said M. B. therefore afterwards, to wit, on, &c. at, &c. duly proved the said last will and testament of the said A. B. and took upon herself the charge and burthen of the execution thereof and the said M. B. afterwards, to wit, on, &c. at, &c. as executrix in form aforesaid, the said sum of money mentioned in the said note being then and there wholly unpaid, *indorsed* the said note, her own proper hand-writing being thereunto subscribed, and by that indorsement she the said M. as executrix as aforesaid, appointed the contents of the said note to be paid to the said plaintiff, and then and there *delivered* the said note, so indorsed, to the said plaintiff, of all which said premises the said Richard afterwards, to wit, on, &c. at, &c. had notice: and by reason of the premises, and by force of *the statute* in such case made and provided, he the said Richard became liable to pay to the said plaintiff the said sum of money mentioned in the said note, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid, and being so liable, &c. undertook, &c. (Add the common money Counts; breach.)

Indorsement.

Declaration on a promissory note, which was indorsed by the Administratrix of Drawee, after his death, to Plaintiff, against the Drawer.

LONDON, to wit. R. M. *v.* W. P. for that whereas the said W. P. on, &c. at, &c. made his certain note in writing, commonly

monly called a promissory note, his own proper hand being thereunto subscribed, and bearing date the same day and year aforesaid, and then and there delivered the said note to one A. B. and thereby promised to pay to the said A. B. by the name of, &c. or order, twenty pounds, four months after date, value received: and the said R. M. avers, that the said A. B. afterwards, and before the payment of the said sum of money, or of any part thereof, to wit, on, &c. at, &c. died intestate; and thereupon afterwards, to wit, on, &c. administration of all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his death, by Thomas by divine permission archbishop of Canterbury, primate of all England, and metropolitan, to one C. B. relict and widow of the said A. B. in due form of law was granted; and thereupon the said C. B. as administratrix in form aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, to wit, on, &c. at, &c. indorsed the said note, her own proper hand-writing being thereto subscribed; and by that indorsement she the said C. B. as administratrix as aforesaid, appointed the contents of the said note to be paid to the said plaintiff; whereof the said W. P. afterwards, to wit, on, &c. at, &c. had notice: by means of which said premises, and by force of the statute in such case made and provided, the said W. P. became liable to pay to the said plaintiff the said sum of money mentioned in the said note, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; and being so liable, &c. (Add the common Counts.)

SECOND INDORSEE.

The *Second* (5) *Indorsee* against *Makers* (partners) on a note made by both.

(5) Salk. 127. Ld. Raym. 444. 2. Barn. B. R. 82. Str. 442.

THAT whereas, [&c. state the making and delivery of note by *both* defendants in the ordinary way, and then proceed as follows:] And the said A. (the payee and first indorser, to whom or to whose order the payment of the said sum of money in the said note specified was to be made, afterwards, and before the payment of the said sum of money in the said note specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, *indorsed* the said note, and by that indorsement appointed the said sum of money in the said note specified to be paid to one B. (the first indorsee and second indorser,) and then and there *delivered* the said note, so indorsed as aforesaid, to the said B. and the said B. to whom or to whose order the said sum of money in the said note specified was by virtue of the said indorsement so made thereon as aforesaid to be paid, afterwards, and before the payment of the said sum of money in the said note specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, *indorsed*, &c. and by that indorsement appointed, &c. to be paid to the said *D*. (the plaintiff and second indorsee,) and then and there delivered,

1st Indorsement.

2d Indorsement. Doug. 611. Burr. 1523, 458.

livered, &c. (as before); of which ſaid ſeveral indorſements ſo made on the ſaid note as aforeſaid, the ſaid *E.* and *F.* (drawers and defendants,) afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, had notice: whereby, and by reaſon of which ſaid ſeveral premiſes, and by force of the ſtatute, &c. the ſaid *E.* and *F.* (defendants and drawers) became liable to pay, &c. according to the tenor and effect of the ſaid note, and of the ſaid ſeveral (*a*) indorſements ſo thereon made as aforeſaid; and being ſo liable, &c. undertook, &c. according to the tenor and effect of the ſaid note and the ſaid ſeveral indorſements, &c.

(*a*) This ſeems proper, as it is not only by reaſon of the note, but of the indorſement alſo, that defendant becomes liable to pay to the plaintiff: however, whenever the *indorſement be to pay at a different time* than the note, you ſhould confine the obligation of payment *to the tenor of ſuch indorſement*, and not of the note likewiſe; and indeed the indorſement ſeems ſo much attended to, that it has been held ſufficient even in ordinary caſes, to ſtate the obligation of payment, as well as promiſe, to be "according to the tenor of ſuch indorſement," without mentioning the note, though it was objected the indorſement might be to pay at an earlier period than the note. Stra. 478.

Declaration on a promiſſory note, *Second Indorſee v. Maker where part of the money had been paid to the firſt Indorſee.*

JAMES HOLMAN, late of London, aforeſaid, was attached &c. for that whereas the ſaid James, on the, &c. at, &c. made his certain note in writing, commonly called a promiſſory note, ſubſcribed with his own proper hand, and bearing date the ſame day and year aforeſaid, and then and there *delivered* the ſaid note to one Thomas Weir, and thereby promiſed to pay to the ſaid Thomas, by the name of, &c. or order, the ſum of ſeventy pounds ſterling, on the, &c. next enſuing the date of the ſaid note, for value received by the ſaid James: and the ſaid Thomas, to whom or to whoſe order the payment of the ſaid ſum of money contained in the ſaid note was to be made, after the making of the ſaid note, and before the payment of the ſaid ſum of money contained in the ſaid note, *or any part thereof, and alſo before the time appointed by the ſaid note for the payment thereof*, to wit, on, &c. at, &c. aforeſaid,

Indorſement.

indorſed the ſaid note, his own proper hand being thereto ſubſcribed, and by that indorſement appointed the contents of the ſaid note to be paid to one George Spencer, and then and there *delivered* the ſaid note to the ſaid George Spencer; whereof the ſaid James afterwards, to wit, on, &c. at, &c. had notice; and thereupon the ſaid James afterwards, to wit, on, &c. at, &c. paid to the ſaid George ten pounds, *part payment of the ſaid ſeventy pounds* in the ſaid note contained: and the ſaid George *afterwards*, and before the payment of the ſaid ſixty pounds, *reſidue* of the ſaid ſeventy pounds in the ſaid note contained, or of any part thereof, to the ſaid George, to

2d Indorſement after part paid, and before payment of the reſidue.

wit, on, &c. at, &c. *indorſed* the ſaid note, his own proper hand being thereto ſubſcribed; and by that ſaid laſt mentioned indorſement the ſaid George appointed the ſaid ſixty pounds, the ſaid reſidue of the ſaid ſum of money in the ſaid note contained, to be paid to the ſaid William, and then and there *delivered* the ſaid note to the ſaid William; whereof the ſaid James afterwards, to wit,

wit, on, &c. at, &c. had notice: and by reaſon of the premiſes, and by *force of the ſtatute* in ſuch caſe made and provided, the ſaid James, became liable to pay the ſaid ſixty pounds, the *reſidue* of the ſaid ſum of money in the ſaid note contained, to the ſaid William, according to the tenor and effect of the ſaid note, and the ſaid *ſeveral indorſements* ſo made thereon as aforeſaid; and being ſo liable, he the ſaid James, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid William to pay him the ſaid ſixty pounds, *reſidue* of the ſaid ſum of money in the ſaid note contained, according to the tenor and effect of the ſaid note, and of the ſaid ſeveral indorſements ſo made thereon as aforeſaid. (Add the common money Counts and concluſion.)

Declaration by the *Aſſignees* of the *ſurviving partners*, who were *Second Indorſees* of a promiſſory note, againſt *Aſſignees* of *Makers*.

LONDON, to wit. J. S. E. S. J. T. V. P. S. E. C. and P. M. aſſignees of the goods, debts, and effects which were of T. C. and J. H. late ſurviving copartners in trade together, having ſurvived one J. B. deceaſed, who in his lifetime, together with the ſaid T. C. and J. H. were partners and joint dealers in trade, and which ſaid T. C. and J. H. ſurviving partners as aforeſaid, ſince the deceaſe of the ſaid J. B. deceaſed as aforeſaid, are bankrupts, within the true intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, complain againſt R. C. J. D. and W. M. aſſignees of the goods, debts, and effects which were of F. S. and W. H. late copartners in trade together, bankrupts, within the intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, being in the cuſtody of, &c. for that whereas the ſaid F. S. and W. H. after the firſt day of May which was in the year of Our Lord ——, and before they became bankrupts, to wit, on, &c. A. D. 1780, at, &c. in, &c. made their certain note in writing, commonly called a promiſſory note, with the proper hand-writing of one of them the ſaid F. S. and W. H. by and in their partnerſhip name, firm, and ſtyle of F. S. and Co. being thereunto ſubſcribed, bearing date the ſame day and year laſt aforeſaid. and then and there delivered the ſaid note to one J. F.; by which ſaid note the ſaid F. S. and W. H. before they became bankrupts, five months after the date thereof, promiſed to pay to the ſaid J. F. by the name and deſcription of, &c. or order, the ſum of five hundred pounds value received by the ſaid F. S. and W. H. before they became bankrupts: and the ſaid J. F. to whom or to whoſe order the payment of the ſaid ſum of money in the ſaid note was thereby appointed to be made, afterwards, and before the payment of the ſaid ſum of money therein mentioned, or any part thereof, and alſo before the time appointed by the ſaid note for the payment thereof, to wit, on, &c. at, &c. indorſed the ſaid note, with his own proper hand-writing thereto ſubſcribed; and by that indorſement appointed the contents of the ſaid note to be paid to one T. H.; and the ſaid T. H. to whom or to whoſe order the pay-

payment of the ſaid ſum of money in the ſaid note mentioned was by the ſaid indorſement appointed to be made, afterwards, and before the payment of the ſaid ſum of money therein mentioned, or any part thereof, and alſo before the time appointed by the ſaid note for the payment thereof, to wit, on, &c. at, &c. in, &c. indorſed the ſaid note, with his own proper hand-writing thereto ſubſcribed, and by the ſaid laſt mentioned indorſement appointed the contents of the ſaid note to be paid to the ſaid J. B. T. C. and J. H. in the lifetime of the ſaid J. B. and before the ſaid T. C. and J. H. became bankrupts, and then and there delivered the ſaid note, ſo indorſed, to the ſaid J. B. T. C. and J. H. in the lifetime of the ſaid J. B. and before the ſaid T. C. and J. H. became bankrupts: and the ſaid plaintiffs, as aſſignees as aforeſaid, further ſay, that afterwards, and before the time appointed by the ſaid note for the payment of the ſaid ſum of money therein contained, to wit, on, &c. at, &c. the ſaid J. B. died, and the ſaid T. C. and J. H. before they became bankrupts, ſurvived the ſaid J. B. there and thereupon became poſſeſſed of the ſaid note, ſo indorſed as aforeſaid, as ſurviving partners, having ſurvived the ſaid J. B. deceaſed as aforeſaid; of all which ſaid premiſes they the ſaid F. S. and W. H. afterwards, and before they became bankrupts, to wit, on, &c. at, &c. in, &c. had notice: and by reaſon of the ſaid premiſes, and alſo by force of the ſtatute in ſuch caſe made and provided, they the ſaid F. S. and W. H. before they became bankrupts, became and were liable to pay the ſaid T. C. and J. H. as ſuch ſurviving partners, before they the ſaid T. C. and J. H. became bankrupts, the ſaid ſum of money contained in the ſaid note, according to the tenor and effect thereof, and of the ſaid indorſements ſo made thereon as aforeſaid; and being ſo liable, they the ſaid F. S. and W. H. before they became bankrupts, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and to the ſaid T. C. and J. H. as ſuch ſurviving partners as aforeſaid, before they the ſaid T. C. and J. H. became bankrupts, then and there faithfully promiſed to pay to them the ſaid ſum of money contained in the ſaid note, whenever they the ſaid F. S. and W. H. ſhould be thereto afterwards requeſted. And whereas alſo the ſaid F. S. and W. H. before they became bankrupts, afterwards, to wit, on, &c. at, &c. in, &c. were indebted to the ſaid T. C. and J. H. as ſuch ſurviving partners as aforeſaid, and before they the ſaid T. C. and J. H. became bankrupts, in the ſum of other five hundred pounds of lawful money of Great Britain, for ſo much money by the ſaid T. C. and J. H. as ſuch ſurviving partners as aforeſaid, and before the ſaid T. C. and J. H. became bankrupts, before that time lent and advanced to and for the uſe of the ſaid F. S. and W. H. before they became bankrupts, at their ſpecial inſtance and requeſt; and being ſo indebted as laſt aforeſaid, they the ſaid F. S. and W. H. before they became bankrupts, in conſideration, &c. (as before.) And whereas, &c. &c. (an account ſtated.) Yet the ſaid F. S. and W. H. before they became bankrupts, and the ſaid defendants as aſſignees as aforeſaid, ſince the ſaid F. S. and W. H.

2d Count. (margin, beside "queſted. And whereas alſo")

3d Count. Breach. (margin, beside "(as before.) And whereas")

W. H. became bankrupts, not regarding the ſaid ſeveral promiſes and undertakings by them the ſaid F. S. and W. H. before they became bankrupts ſo made as aforeſaid, but contriving, &c. the ſaid T. C. and J. H. as ſuch ſurviving partners as aforeſaid, and before they the ſaid T. C. and J. H. became bankrupts, and the ſaid plaintiffs, as aſſignees as aforeſaid, ſince the ſaid T. C. and J. H. as ſurviving partners as aforeſaid, became bankrupts, in this behalf have not, nor have either or any of them, yet paid the ſaid ſeveral ſums of money, or any part thereof, either to the ſaid T. C. or J. H. as ſuch ſurviving partners, and before they the ſaid T. C. and J. H. became bankrupts, or to the ſaid plaintiffs, aſſignees as aforeſaid, or to either or any of them, ſince the ſaid T. C. and J. H. ſurviving partners as aforeſaid, became bankrupts, (although often requeſted ſo to do,) but to pay the ſame, or any part thereof, either to the ſaid T. C. and J. H. ſurviving partners as aforeſaid, before they the ſaid T. C. and J. H. became bankrupts, or to the ſaid plaintiffs, aſſignees as aforeſaid, after the ſaid T. C. and J. H. as ſurviving partners as aforeſaid, became bankrupts, or to either or any of them, they the ſaid F. S. and W. H. before they became bankrupts, and the ſaid defendants, aſſignees as aforeſaid, ſince they became bankrupts, have, and each of them hath, hitherto wholly refuſed; and to pay the ſame, or any part thereof, to the ſaid plaintiffs, as aſſignees as aforeſaid, or to either or any of them, they the ſaid defendants, as aſſignees as aforeſaid of the ſaid F. S. and W. H. ſtill do, and each of them ſtill doth, refuſe, to the damage of the ſaid plaintiffs, as aſſignees as aforeſaid, of one thouſand pounds; and therefore, &c.

Declaration on a promiſſory note by an *Indorſee* againſt the *Fifth Indorſer*, the third indorſement being made by an executrix, and the fourth by an adminiſtratrix.

WESTMORELAND, to wit. T. G. complains againſt J. W. being, &c. for that whereas one W. J. on, &c. at, &c. made his certain note in writing, commonly called a promiſſory note, with his own proper hand being thereunto ſubſcribed, bearing date the ſame day and year laſt aforeſaid, and then and there *delivered* the ſaid note to one J. S. by which ſaid note the ſaid W. J. promiſed, &c. (as in the note,) for value received by the ſaid W. J.; and the ſaid J. S. to whom or to whoſe order the payment of the ſaid ſum of money contained in the ſaid note was to be made, afterwards, and before the payment of the ſaid ſum of money contained in the ſaid note, or any part thereof, and alſo before the time appointed by the ſaid note for the payment thereof, to wit, on, &c. at, &c. *indorſed* the ſaid note, his own proper hand being thereunto ſubſcribed, and by that indorſement the ſaid J. S. appointed the contents of the ſaid note to be paid to one T. S. or order, and then and there delivered the ſaid note ſo indorſed to the ſaid T. S.; and the ſaid T. S. to whom or to whoſe order the payment of the ſaid ſum of money in the ſaid note mentioned was by the ſaid indorſement to be made, afterwards, &c. (as above,) and by the ſaid laſt-mentioned indorſement, appointed the contents of the ſaid note to be paid to one W. W. in his life-time,

Indorſement.

2d Indorſement in full to one W. W. (deceaſed) or order.

time, but now deceafed, or to his order, and then and there delivered the faid note fo indorfed to the faid W. W. in his lifetime, but now deceafed; and the faid W. W. afterwards, to wit, on, &c. at, &c. duly made his laft will and teftament in writing, and thereby then and there made and appointed M. W. *executrix* thereof, and afterwards, to wit, on, &c. at, &c. died (the faid fum of money being wholly unpaid to him); and the faid M. W. afterwards, to wit, on, &c. duly proved the faid laft will and teftament, and took upon her the burthen of the execution thereof: and the faid M. W. fo being executrix of the faid will, fhe the faid M. W. afterwards, to wit, on, &c. (as before,) and by the faid laft-mentioned indorfement the faid M. W. appointed the contents of the faid note to be paid to one J. W. in his lifetime, now alfo deceafed, or to his order, and then and there delivered the faid note fo indorfed to the faid J. W. in his lifetime; and the faid J. W. afterwards, to wit, on, &c. died inteftate (the faid fum of money being wholly unpaid to him in his lifetime): and afterwards, to wit, on, &c. at, &c. adminiftration of all and fingular the goods and chattels, rights and credits, which were belonging to the faid J. W. at the time of his death, who fo died inteftate, by Samuel by Divine Providence bifhop of Chefter, was lawfully committed to one M. J.; and the faid M. J. fo being *adminiftratrix* as aforefaid, afterwards, &c. (as before,) and by the faid laft-mentioned indorfement the faid M. J. appointed the contents of the faid note to be paid to the faid W. J.; and the faid W. J. to whom or to whofe order the payment of the faid fum of money contained in the faid note was by the faid laft-mentioned indorfement to be made, afterwards, on, &c. (as before,) and by the faid laft mentioned indorfement the faid W. J. appointed the contents of the faid note to be paid to the faid T. G. and then and there *delivered* the faid note fo indorfed to the faid T. G.; of all which faid feveral indorfements the faid W. J. afterwards, to wit, on, &c. then and there had notice. *And the faid T. G. avers*, that the faid W. J. hath not paid, or caufed to be paid, the faid fum of money in the faid note contained, or any part thereof to the faid T. G. but the payment thereof to him hath hitherto wholly failed and neglected, neither have or hath the faid J. S. T. S. M. W. M. J. or any of them, paid the fame, or any part thereof, to the faid T. G.: of all which premifes the faid W. J. afterwards, and *after the expiration of the faid two months*, mentioned in the faid note, and by the faid note appointed for payment thereof, to wit, on, &c. at, &c. had notice: and by reafon of the premifes, and alfo by *force of the ftatute* in that cafe made and provided, he the faid W. J. became, and was and is, liable to pay to the faid T. G. the faid fum of money contained in the faid note; and the faid W. J. being fo liable, in confideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promifed the faid T. G. to pay him the faid fum of money contained in the faid note when he the faid W. J. fhould be thereto afterward requefted. (Add the common Counts.)

3d Indorfement by *Executrix* of W. W. the fecond Indorfee, to one J. W. fince deceafed.

4th Indorfement by Adminiftratrix of J. W.

5th Indorfement.

Breach.

On

ON POLICIES OF ASSURANCE.

ON SHIPS AND GOODS.

Declaration in B.R. in assumpsit on a policy of assurance by the surviving trustees to the estate of one M. B. a merchant.

LONDON, to wit. James Baillie, Richard Crawshay, William Clay, William Taylor, John Shoolbred, and John Barnes, who have survived Francis Henry Shepherd deceased, complain of William Cazalet, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself; for that whereas the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, heretofore, in the lifetime of the said Francis Henry, to wit, on the twelfth day of February in the year of Our Lord 1787, to wit, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby and containing therein, (amongst other things,) that they the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, (by the description of the Trustees to the Estate of Mr. Miles Barber,) as well in their own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused themselves, and them and every of them, to be insured, lost or not lost, at and from her arrival on the coast of Africa during her stay and trade, with liberty to exchange goods, slaves, and other African products, with any vessel or vessels whatever, and at and from thence to her port or ports of destination, sale, and final delivery in the British and French West Indies, and the continent of America, all or either, or Great Britain, upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, ammunition, artillery, boat, and other furniture of and in the good ship or vessel called the Eleanor, whereof was master, under God, for that then present voyage, Captain Crowdson, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship or the master thereof was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the said ship as aforesaid, upon the said ship, &c. and so should continue and endure during her abode there, upon the said ship, &c. and further, until the said ship, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, should be arrived at   as aforesaid, upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety, and upon the goods and merchandizes until the same should be there discharged and safely landed; and it should be law-

ful for the ſaid ſhip, &c. in that voyage to proceed and ſail to and touch and ſtay at any ports or places whatſoever and whereſoever, without being deemed a deviation, and without prejudice to that inſurance; the ſaid ſhip, &c. goods and merchandizes, &c. for ſo much as concerned the aſſureds, by agreement between the aſſureds and aſſurers in that policy, were and ſhould be valued at : ſhip valued at two thouſand pounds; ſlaves thirty pounds per head; camwood thirty pounds per ton; ivory ſixteen pounds per hundred weight; gold duſt three pounds per ounce; gum copal five pounds per hundred weight; wax five pounds per hundred weight, warranted free from average occaſioned by inſurrection of ſlaves, under five per cent. and free from average, by trading in boats, under ten pounds per cent. touching the adventures and perils which they the aſſurers were contented to bear, and did take upon them, in that voyage, they were of the ſeas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, ſurpriſals, takings at ſea, arreſts, reſtraints, and detainments of all kings, princes, and people of what nation, condition, or quality ſoever, barratry of the maſter and mariners, and of all other perils, loſſes, and misfortunes that had or ſhould come to the hurt, detriment, or damage of the ſaid goods and merchandizes, and ſhip, &c. or any part thereof; and in caſe of any loſs or miſfortune, it ſhould be lawful to the aſſureds, their factors, ſervants, and aſſigns, to ſue, labour, and travel for, in and about the defence, ſafeguard, and recovery of the ſaid goods and merchandizes, and ſhip, &c. or any part thereof, without prejudice to that inſurance, to the charges whereof they the aſſurers would contribute each one according to the rate and quantity of his ſum therein aſſured; and it was agreed by them the inſurers, that that writing or policy of aſſurance ſhould be of as much force and effect as the ſureſt writing or policy of aſſurance theretofore made in Lombard-ſtreet, or in the Royal Exchange, or elſewhere, in London; and ſo they the aſſurers were contented, and did thereby promiſe and bind themſelves, each one for his own part, their heirs, executors, and goods, to the aſſureds, their executors, adminiſtrators, and aſſigns, for the true performance of the premiſes, confeſſing themſelves paid the conſideration due unto them for that aſſurance by the aſſureds at and after the rate of four pounds per cent. to return one pound eight ſhillings and ſixpence per cent. if ſhe proceeded to England from the coaſt, and arrived: and by the ſaid writing or policy of aſſurance, corn, fiſh, ſalt, fruit, flour, and ſeed, were warranted free from average, unleſs general, or the ſhip ſhould be ſtranded; ſugar, tobacco, hemp, flax, hides, and ſkins were warranted free from average, under five pounds per cent. and all other goods; alſo the ſhip and freight were warranted free of average under three pounds per cent. unleſs general, or the ſhip ſhould be ſtranded; and the ſaid inſurance was, by the ſaid writing or policy of aſſurance, declared to be on ſhip and goods, as by the ſaid writing or policy of aſſurance more fully appears; of which ſaid writing or policy of aſſurance the ſaid

William

William Cazalet afterwards, to wit, on the ſaid twelfth day of February in the year of Our Lord 1787, at London aforeſaid, in the pariſh and ward aforeſaid, had notice; and thereupon afterwards, and in the lifetime of the ſaid Francis Henry, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, at the ſpecial inſtance and requeſt of the ſaid William Cazalet, had then and there paid to the ſaid William Cazalet the ſum of ſixteen pounds of lawful money of Great Britain, as a premium and reward for the inſurance of four hundred pounds of and upon the ſaid ſhip and goods in the ſaid writing or policy of aſſurance mentioned, valued as aforeſaid, and had then and there undertaken, and to the ſaid William Cazalet faithfully promiſed, to perform and fulfil all things in the ſaid writing or policy of aſſurance contained on the part and behalf of the aſſureds to be performed and fulfilled, he the ſaid William Cazalet undertook, and to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, then and there faithfully promiſed to become an aſſurer to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, for the ſaid ſum of four hundred pounds of and upon the ſaid ſhip and goods in the ſaid writing or policy of aſſurance mentioned, valued as aforeſaid, and to perform and fulfil all things in the ſaid writing or policy of aſſurance contained, on his part and behalf as ſuch aſſurer, as to the ſaid ſum of four hundred pounds to be performed and fulfilled; and the ſaid William Cazalet then and there became an aſſurer to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, of and upon the ſaid ſhip and goods in the ſaid writing or policy of aſſurance mentioned, valued as aforeſaid accordingly, and then and there ſubſcribed the ſaid writing or policy of aſſurance, as ſuch aſſurer, for the ſaid ſum of four hundred pounds, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: and the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, in fact ſay, that the ſaid ſhip, in the ſaid writing or policy of aſſurance mentioned, before the making of the ſaid writing or policy of aſſurance, to wit, on the thirtieth day of June in the year of Our Lord 1785, arrived in good ſafety on the coaſt of Africa, in the ſaid writing or policy of aſſurance mentioned, and did ſtay and trade there for a great length of time, to wit, from thence until the third day of July in the year of Our Lord 1787; and that the ſaid ſhip, having taken in and loaded on board divers goods and merchandizes of great value, to wit, of the value of five hundred pounds of lawful money of Great Britain, did afterwards, to wit, on the ſame day and year laſt aforeſaid, depart and ſet ſail with the ſaid goods and merchandize on board thereof, from the ſaid coaſt of Africa upon the voyage, in the ſaid writing or policy of aſſurance mentioned, for and towards her port or ports of deſtination, ſale, and final delivery

very in the British and French West Indies and the continent of America: and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said insurance, so made as aforesaid, was made to and for the use and on the account of, and in trust for, one James Crowdson, and one William Hanson, one Edward Rogers, one George Pengree, and one Quintin Dick, according to their several and respective interests therein; and that before and until, and at the time of the loss herein after next mentioned, the said James Crowdson was interested in the said ship, and the said William Hanson, Edward Rogers, George Pengree, and Quintin Dick were interested in the said goods and merchandizes, so on board thereof as aforesaid, to a large amount, to wit, to the amount of all the money ever insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid: and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said ship, in the said writing or policy of assurance mentioned, with the said goods and merchandizes on board thereof as aforesaid, afterwards, and after her departure from the coast of Africa aforesaid, upon her said voyage, and whilst she was sailing and proceeding upon the high seas with the said goods and merchandizes on board thereof as aforesaid, and before her arrival at any of her port or ports of destination, sale, or final delivery in the said writing or policy of assurance mentioned, to wit, on the twenty-sixth day of July in the year of Our Lord 1787, was, by the mere perils and dangers of the seas, and by stormy and tempestuous weather, and the violence of the winds and waves, bulged, broken, damaged, spoiled, and destroyed, and the said ship, together with the said goods and merchandizes so on board thereof as aforesaid, thereby became and were rendered of no use or value, and were wholly lost to the respective proprietors thereof, to wit, at London aforesaid, in the parish and ward aforesaid; of all which premises the said William Cazalet afterwards, and in the lifetime of the said Francis Henry, to wit, on the first day of January in the year of Our Lord 1788, there had notice: and by reason thereof he the said William Cazalet then and there became and was liable to pay, and was then and there requested by the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, to pay them the said sum of four hundred pounds so by him assured as aforesaid, and which said sum of money he the said William Cazalet then and there ought to have paid, according to the meaning and effect of the said writing or policy of assurance, and of his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money laid out and expended, had and received.) Yet the said William Cazalet, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James Baillie, Richard, William Clay,

William

William Taylor, John Shoolbred, John Barnes, and Francis Henry, in the lifetime of the ſaid Francis Henry, and the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, ſince the death of the ſaid Francis Henry, in this behalf did not, in the lifetime of the ſaid Francis Henry, pay to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them, nor hath he, ſince the death of the ſaid Francis Henry, paid to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, the ſaid ſeveral ſums of money, or any or either of them, or any part of them, (although often requeſted ſo to do,) but to pay the ſaid ſeveral ſums of money, or any or either of them, or any part of them, to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them in the lifetime of the ſaid Francis Henry, he the ſaid William Cazalet did wholly refuſe to pay the ſaid ſeveral ſums of money, or any or either of them, or any part of them, to the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, ſince the death of the ſaid Francis Henry, hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, of five hundred pounds; and therefore they bring ſuit, &c. EDWARD LAW.

See poſt. for the remaining Counts in this declaration, with Mr. Law's and Mr. Erſkine's Opinions.

Declaration in B. R. in aſſumpſit on a policy of aſſurance for *freight* from Boſton to Briſtol, where the ſhip was conſumed by *fire*.

LONDON, to wit. Henry Cruger, eſquire, complains of William Fowler, being in the cuſtody of the marſhal of the marſhalſea of our ſovereign lord the now king, before the king himſelf, of a plea, &c. for that whereas the ſaid Henry heretofore, to wit, on the fifth day of January in the year of Our Lord 1788, at London, to wit, in the pariſh of St. Mary le Bow, in the ward of Cheap, according to the uſage and cuſtom of merchants, cauſed and procured to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein, that the ſaid Henry, (by the name and deſcription of Henry Cruger of the city of Briſtol,) merchant, or who elſe might or ſhould be concerned, did make aſſurance, and cauſed themſelves to be aſſured (loſt or not loſt) at and from Boſton to Briſtol quay, upon the body, tackle, apparel, and all other the furniture of, in, and in and upon the good ſhip called the Enterprize, of the burden of tons, or thereabouts, whereof was maſter, under God, for that voyage, Joſeph Deane, or whoſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatſoever other name or names the ſame ſhip, or the maſter thereof, was or ſhould be named or called; beginning the adventure

adventure upon the ſaid ſhip, tackle, apparel, &c. at and from Boſton as aforeſaid, and ſo ſhould continue and endure until the ſaid ſhip ſhould be ſafely arrived at aforeſaid, and until ſhe ſhould be moored twenty and four hours in good ſafety at Briſtol quay, and it ſhould be lawful for the ſaid ſhip, &c. in her voyage to proceed and ſail to, touch and ſtay at, any ports or places, without prejudice to that inſurance; the ſaid ſhip, tackle, &c. for ſo much as it concerned the aſſured by agreement made between the aſſured and aſſurers in that policy, were and ſhould be valued at ſeven hundred and fifty pounds ſterling, without any further account to be given by the aſſured to the aſſurers, or any of them for the ſame, touching the adventures and perils which they the aſſurers were contented to bear and take upon themſelves in that voyage, they were of the ſeas, men of war, fires, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, ſurpriſal, takings at ſea, arreſts, reſtraints, and detainments, of all kings, princes, or people, of what nation, condition, or quality ſoever, barratry of the maſter and mariners, and all other perils, loſſes, and misfortunes that had or ſhould come to the hurt, detriment, or damage of the ſaid ſhip, tackle, &c. or to any part thereof; and in caſe of any loſſes or misfortunes, it ſhould be lawful to and for the aſſured, their factors, ſervants, and aſſignees, to ſue, labour, and travel for, in and about the defence, ſafeguard, and recovery of the ſaid ſhip, tackle, &c. or any part thereof, without prejudice to that inſurance; to the charges whereof they the aſſurers would contribute, each one according to the rate and quantity of his ſum therein aſſured. And it was agreed by them the aſſurers that that writing or policy of aſſurance ſhould be of as much force and effect as the ſureſt writing or policy of aſſurance theretofore made in Lombard-ſtreet, or elſewhere in London; and ſo they the aſſurers were contented, and did thereby promiſe and bind themſelves, each one for his own part, their heirs, executors, and goods, to the aſſured, their executors, adminiſtrators, and aſſigns, for the true performance of the premiſes, confeſſing themſelves paid the conſideration due unto them for that aſſurance by the ſaid aſſured, or their aſſigns, at three guineas per cent.; in witneſs whereof, they the aſſurers had ſubſcribed their names and ſums aſſured, in Briſtol, the fifth day of January 1788 aforeſaid, as by the ſaid writing or policy of aſſurance more fully appears: and by the ſaid writing or policy of aſſurance it was further agreed by and between the aſſured and aſſurers, that in caſe of any average loſs, not exceeding five pounds per cent. the aſſurers, by agreement, were not to pay or allow any thing towards ſuch loſs; and, by the ſaid writing or policy of aſſurance, corn, fiſh, ſalt, fruit, flour, and ſeed were warranted free from average, unleſs general, or the veſſel ſhould be ſtranded; and that the freight of the ſaid ſhip in the ſaid voyage in the ſaid writing or policy of aſſurance mentioned, valued at two hundred pounds ſterling, ſhould be inſured by the ſaid writing or policy of aſſurance, on the terms and conditions therein contained reſpecting the ſaid ſhip, as

as by the ſaid writing or policy of aſſurance, reference being thereunto had, may more fully appear; of which ſaid writing or policy of aſſurance the ſaid William afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice; and thereupon afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid Henry, at the ſpecial inſtance and requeſt of the ſaid William, had then and there paid to the ſaid William the ſum of three guineas of lawful money of Great Britain, as a premium and reward for the aſſurance of one hundred pounds, upon the freight of the ſaid ſhip in the ſaid voyage in the ſaid writing or policy of aſſurance mentioned, and had then and there undertaken, and to the ſaid William then and there faithfully promiſed, to perform and fulfil every thing in the ſaid writing or policy of aſſurance contained on the part and behalf of the aſſured to be done, performed, and fulfilled, he the ſaid William undertook, and to the ſaid Henry then and there faithfully promiſed, that he the ſaid William would become an aſſurer to the ſaid Henry for the ſum of one hundred pounds, in and upon the freight of the ſaid ſhip in the ſaid voyage in the ſaid *writing or policy of aſſurance* mentioned, and would do, perform, and fulfil all things in the ſaid writing or policy of aſſurance contained on his part and behalf as ſuch aſſurer as aforeſaid as to the ſaid one hundred pounds, to be done, performed, and fulfilled; and the ſaid William then and there became an aſſurer to the ſaid Henry, and ſubſcribed the ſaid writing or policy of aſſurance, as ſuch aſſurer, for the ſaid ſum of one hundred pounds: and the ſaid Henry in fact ſaith, that the ſaid ſhip, at and after the time of the making of the ſaid writing or policy of aſſurance, to wit, on the ſame day and year aforeſaid, was in good ſafety, to wit, at Boſton aforeſaid, in the ſaid writing or policy of aſſurance mentioned; and that afterwards, to wit, on the ſame day and year aforeſaid, the ſaid ſhip, with divers goods and merchandizes on board of great value, to wit, of the value of one thouſand pounds, departed and ſailed from Boſton as aforeſaid on her ſaid intended voyage, and that one Iſaiah Doane then, and from thence until and at the time of the loſs herein after mentioned, was intereſted in the freight of the ſaid ſhip in the ſaid voyage to a large amount, to wit, to the amount of all the monies by him ever inſured or cauſed to be inſured thereon, and that the ſaid inſurance, ſo made as aforeſaid in the name of the ſaid Henry, was made for and on the account of the ſaid Iſaiah Doane, and for his uſe and benefit, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and the ſaid Henry further ſays, that the ſaid ſhip, in the ſaid writing or policy of aſſurance mentioned, with the ſaid cargo on board her, afterwards, and after the making of the ſaid writing or policy of aſſurance, to wit, on the ſame day and year aforeſaid, departed and ſet ſail from Boſton aforeſaid, in the ſaid writing or policy of aſſurance mentioned, upon her ſaid intended voyage, towards Briſtol aforeſaid, in the ſaid writing or policy of inſurance mentioned: and the ſaid Henry further ſays, that the ſaid ſhip, with

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the faid goods and merchandize on board of her, afterwards, and after her departure from Bofton aforefaid, upon her faid intended voyage, in the faid writing or policy of affurance mentioned, and whilft fhe was failing and proceeding upon the high feas, and in her faid voyage, and before fhe arrived at Briftol, in the faid writing or policy of affurance mentioned, to wit, on the fourteenth day of March in the year of Our Lord 1788 aforefaid, on the high feas, was wholly confumed, deftroyed, and burnt by fire; and the faid fhip, and the goods and merchandizes fo being on board the faid fhip, were wholly deftroyed and loft, and the freight of the faid fhip in the faid voyage thereby wholly loft to the faid Ifaiah Doane, that is to fay, at London aforefaid, in the parifh and ward aforefaid; of all which premifes the faid William afterwards, to wit, on the fame day and year laft aforefaid, at London aforefaid, in the parifh and ward aforefaid, had notice, and was then and there requefted by the faid Henry to pay him the faid fum of one hundred pounds, fo by the faid William infured as aforefaid; and which faid laft mentioned fum of one hundred pounds the faid William then and there ought to have paid to the faid Henry, according to the form and effect of the faid writing or policy of affurance, and the faid promife and undertaking fo made by the faid William in that behalf as aforefaid, to wit, at London aforefaid, in the parifh and ward aforefaid. (Counts for money had and received.) Neverthelefs the faid William, not regarding his faid feveral promifes and undertakings in form aforefaid made, but contriving and fraudulently intending, craftily and fubtilly to deceive and defraud the faid Henry in this behalf, hath not paid to the faid Henry the faid feveral fums of money, or any of them, or any part thereof, (although fo to do he the faid William afterwards, to wit, on the fame day and year laft aforefaid, at London aforefaid, in the parifh and ward aforefaid, was by the faid Henry requefted,) but to pay the fame to the faid Henry he the faid William hath hitherto wholly refufed, and ftill doth refufe: whereupon he the faid Henry faith he is injured and hath fuftained damage to the value of one hundred pounds; and therefore he brings his fuit, &c. SAM. HEYWOOD.

Record of an iffue in affumpfit on a policy of infurance on goods, &c. fhip warranted to fail with convoy from Grenada to Liverpool, fhip foundered in her voyage home.

LONDON, to wit. Be it remembered, that on Thurfday next after eight days of St. Hilary in this fame Term, before our lord the king at Weftminfter, come Walter Stott and John Tate, by Richard Shawe their attorney, and bring into the court of our faid lord the king, before the king himfelf now here, their certain bill againft John Taylor Vaughan, being in the cuftody of the marfhal of the marfhalfea of our lord the now king, before the king himfelf, of a plea of trefpafs on the cafe; and there are pledges for the profecution, to wit, Peter Doe and Abel Roe; which faid bill follows in thefe words, to wit: London, to wit, Walter Scott and John Tate complain of John Taylor Vaughan, being in the cuftody of the marfhal of the marfhalfea of our lord the now king, before the king himfelf, of a plea; for that where-

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as the ſaid Walter and John Tate, heretofore, to wit, on the tenth day of September in the year of Our Lord 1793, at London, to wit, in the pariſh of St. Mary le Bow, in the ward of Cheap, according to the uſage and cuſtom of merchants, cauſed and procured to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein, (amongſt other things) that the ſaid Walter and John Tate, by the name and deſcription of "Walter Stott, eſquire, and Co." as well in their own name, as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might, or ſhould appertain in part or in all, did make aſſurance, and cauſe themſelves and them, and every of them, to be inſured, loſt or not loſt, at and from Grenada to Liverpool, warranted to ſail on or before the firſt of Auguſt 1793, upon any kind of goods and merchandizes, and alſo upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ſhip or veſſel called the Anna Philippa and Heart of Oak, both or either, whereof was maſter, under God, for that then preſent voyage, A. B. or whoſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatſoever other name or names the ſaid ſhip, or the maſter thereof, was or ſhould be named or called; beginning the adventure upon the ſaid goods and merchandizes from the loading thereof aboard the ſaid ſhip, at Grenada, upon the ſaid ſhip, &c. and ſo ſhould continue and endure, during her abode there, upon the ſaid ſhip, &c. and further, until the ſaid ſhip, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatſoever, ſhould be arrived at Liverpool, upon the ſaid ſhip, &c. until ſhe had moored at anchor twenty-four hours in good ſafety; and upon the goods and merchandizes, until the ſame ſhould be there diſcharged and ſafely landed; and it ſhould be lawful for the ſaid ſhip, &c. in that voyage to proceed and ſail to, and touch and ſtay, at any ports or places whatſoever, without prejudice to that inſurance; the ſaid ſhip, &c. goods and merchandizes, &c. for ſo much as concerned the aſſureds, by agreement between the aſſureds and aſſurers in that policy, were and ſhould be valued at touching the adventures and perils which they the aſſurers were contented to bear, and did take upon themſelves in that voyage, they were of the ſeas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, ſurpriſals, takings at ſea, arreſts, reſtraints, and detainments of all kings, princes, and people, of what nation, condition, or quality ſoever, barratry of the maſter and mariners, and of all other perils, loſſes and miſfortunes, that had or ſhould come to the hurt, detriment, or damage of the ſaid goods and merchandizes, and ſhip, &c. or any part thereof; and in caſe of any loſs or misfortune, it ſhould be lawful to the aſſureds, their factors, ſervants, and aſſigns, to ſue, labour and travel for, in and about the defence, ſafeguard, and recovery of the ſaid goods and merchandizes, and ſhip, &c. or any part thereof, without prejudice to the inſurance; to the charges whereof they the aſſurers would contribute each one according

ing to the rate and quantity of his ſum therein aſſured. And it was agreed by them the inſurers, that that writing or policy of aſſurance ſhould be of as much force and effect as the ſureſt writing or policy of aſſurance theretofore made in Lombard-ſtreet, or in the Royal Exchange, or elſewhere in London; and ſo they the aſſurers were contented, and did thereby promiſe and bind themſelves, each one for his own part, their heirs, executors, and goods, to the aſſureds, their executors, adminiſtrators, and aſſigns, for the true performance of the premiſes, confeſſing themſelves paid the conſideration due unto them for that aſſurance by the aſſured, at and after the rate of five guineas per cent. warranted to ſail with convoy. And by the ſaid writing or policy of aſſurance, corn, fiſh, ſalt, fruit, flour, and ſeed, were warranted free from average, unleſs general, or the ſhip ſhould be ſtranded; ſugar, tobacco, hemp, flax, hides, and ſkins, were warranted free from average, under five pounds per cent. and all other goods, alſo the ſhip and freight, were warranted free of average, under three pounds per cent. unleſs general, or the ſhip ſhould be ſtranded. And the ſaid inſurance was by the ſaid writing or policy of aſſurance declared to be on goods, as intereſt of aſſurance might appear, as by the ſaid writing or policy of aſſurance more fully appears; of which ſaid writing or policy of aſſurance the ſaid John Taylor afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice. And thereupon, afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid Walter and John Tate, at the ſpecial inſtance and requeſt of the ſaid John Taylor, had then and there paid to the ſaid John Taylor the ſum of five guineas of lawful money of Great Britain, as a premium and reward for the aſſurance of one hundred pounds, upon goods on board the Anna Philippa and Heart of Oak, both or either, in the ſaid writing or policy of aſſurance mentioned; and had then and there undertaken, and to the ſaid John Taylor faithfully promiſed, to perform and fulfil every thing in the ſaid writing or policy of aſſurance on the part and behalf of the aſſured to be done, performed, and fulfilled, he the ſaid John Taylor undertook, and to the ſaid Walter and John Tate then and there faithfully promiſed, that he the ſaid John Taylor would become an aſſurer to the ſaid Walter and John Tate for the ſaid ſum of one hundred pounds, upon the ſaid goods on board the Anna Philippa and Heart of Oak, both or either, in the ſaid writing or policy of aſſurance mentioned, and would do, perform, and fulfil all things in the ſaid writing or policy of aſſurance contained on his part and behalf, as ſuch aſſurer as aforeſaid, as to the ſaid one hundred pounds to be done, performed, and fulfilled; and the ſaid John Taylor then and there became an aſſurer to the ſaid Walter and John Tate of and upon the ſaid goods as aforeſaid, and then and there ſubſcribed the ſaid writing or policy of aſſurance, as ſuch aſſurer, for the ſaid ſum of one hundred pounds, to wit, at London aforeſaid, in the pariſh and

and ward aforefaid. And the faid Walter and John Tate in fact fay, that before the making of the faid writing or policy of affurance, to wit, on the nineteenth day of July in the year aforefaid, (the faid fhip or veffel called the Heart of Oak, in the faid writing or policy of affurance mentioned, being in good fafety at Grenada, in the faid writing or policy of affurance mentioned,) divers goods and merchandizes of great value, to wit, of the value of five hundred and feventy pounds fifteen fhillings, of lawful money of Great Britain, were then and there fhipped by the faid Walter and John Tate in and on board of the faid fhip or veffel called the Heart of Oak, to be carried therein from Grenada aforefaid, on the faid voyage in the faid writing or policy of affurance mentioned; and that divers other goods and merchandizes of great value, to wit, of the value of fix hundred and thirty pounds five fhillings, of like lawful money, were then and there, to wit, at Grenada aforefaid, fhipped by the faid Walter and John Tate on board of the faid other fhip called the Anna Philippa, in the faid writing or policy of affurance, to be carried there in the voyage aforefaid, to wit, at London aforefaid, in the parifh and ward aforefaid; and that the faid Walter and John Tate, then and from thence, until and at the time of the lofs herein after mentioned, were interefted in the faid goods and merchandizes on board of the faid fhip called the Heart of Oak, in the faid writing or policy of affurance mentioned, to a large amount, to wit, to the full amount of the faid fum of five hundred and feventy pounds fifteen fhillings; and that the faid infurance, fo made as aforefaid, was fo made to and for the ufe and benefit and on the account of them the faid Walter and John Tate, to wit, at London aforefaid, in the parifh and ward aforefaid. And the faid Walter and John Tate further fay, that the faid fhip called the Heart of Oak, in the faid writing or policy of affurance mentioned, with the faid goods and merchandizes on board thereof as aforefaid, afterwards, and before the faid firft day of Auguft in the faid writing or policy of affurance mentioned, to wit, on the twenty-third day of July in the year aforefaid, departed and fet fail from Grenada aforefaid, with *convoy*, according to the meaning and effect of the faid writing or policy of infurance, for her faid intended voyage to Liverpool aforefaid, in the faid writing or policy of infurance mentioned; and that afterwards, and whilft the faid fhip or veffel called the Heart of Oak, with the faid goods and merchandizes on board thereof as aforefaid, was failing and proceeding upon the high feas, upon her faid voyage, for and towards Liverpool aforefaid, and before fhe arrived at Liverpool aforefaid, and during the courfe of the faid voyage in the faid writing or policy of affurance mentioned, to wit, on the twenty-fifth day of July in the year aforefaid, the faid fhip, with the faid goods and merchandizes fo being on board, was, by the mere perils and dangers of the feas, and by ftormy and tempeftuous weather, and the force and violence of the winds and waves, bulged, wrecked, foundered, and funk, whereby the faid goods and merchandizes, fo being on board the fame

fhip

ship as aforesaid, became and were wholly lost to the said Walter and John Tate, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises the said John Taylor afterwards, to wit, on the first day of January in the year of Our Lord 1794, at London aforesaid, in the parish and ward aforesaid, had notice: and by reason thereof the said John Taylor then and there became liable to pay to the said Walter and John Tate a large sum of money, to wit, the sum of fifty pounds in respect of the said sum of one hundred pounds, so by him insured as aforesaid, according to the meaning and effect of the said writing or policy of assurance, and of the said promise and undertaking so made by him the said John Taylor in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (A Count for money had and received.) Nevertheless the said John Taylor, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Walter and John Tate in this respect, hath not yet paid the said several sums of money, or any part thereof, to the said Walter and John Tate, or either of them, nor in any manner satisfied them for the same, (although often, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, by the said Walter and John Tate requested so to do,) but to pay the same to the said Walter and John Tate, or to either of them, or in any manner to satisfy them for the same, he the said John Taylor hath hitherto wholly refused, and doth still refuse, to the damage of the said Walter and John Tate of two hundred pounds; and therefore they bring their suit, &c.

I Have left unaltered the averment that the ship sailed with convoy from Grenada, for without it I think the declaration would be bad. If the ship sailed under convoy of a man of war appointed by the admiral to carry the merchantmen to the place of rendezvous, it will be a sailing with convoy within this policy, though such man of war did not afterwards accompany the fleet in the voyage. As far as I can gather of the facts, I think the clause giving liberty to touch, &c. relates only to touching at places *in the voyage* insured.

SAMUEL HEYWOOD.

And the said John Taylor, by Francis Gregg the younger his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said Walter and John have above thereof complained against him; and of this he puts himself upon the country, &c. and the said Walter and John do the like, &c.; therefore let a jury thereupon come before our lord the king at Westminster, on next after by whom, &c. and who neither, &c. to recognize, &c. because, as well, &c. the same is given to the parties aforesaid at the same place.

AND

Different Counts in declarations in assumpsit on policies of assurance on *ships and goods*.

For *barratry* of the master and sailors.

AND the said H. further says, that afterwards, and before the arrival of the said last mentioned ship, with the said goods and merchandizes so loaden on board her as last aforesaid, at Rotterdam aforesaid, the master and mariners in and on board the said last mentioned ship, *in a barratrous* and fraudulent manner, without the knowledge and against the will of the said H. took and carried away the said last mentioned ship, with the said goods and merchandizes so on board her as aforesaid, to places unknown to the said H. and converted and disposed thereof to their own use; and the said H. lost and was thereby deprived of the said last mentioned ship, and the goods and merchandizes so on board her as aforesaid, and the profits thereof.

Capture by (*enemies*) the French.

AND that whilst the said last mentioned ship was sailing and proceeding on her said voyage, and before her arrival at Charles-town, in the said writing or policy of assurance mentioned, to wit, on the tenth of July in the year aforesaid, the said ship was, upon the high seas, with force and arms, and in an hostile manner, attacked, conquered, took, and carried away a prize by certain *enemies* of our lord the now king and his crown of Great Britain, to wit, by certain subjects of the French king, being then and still at enmity and open war with the said lord the king, and thereby the same ship, with all the tackle, apparel, boat, and other furniture thereof, became and was totally lost to the said plaintiff, to wit, at, &c.; of all which, &c.

Goods damaged by [illegible] in a storm.

AND that afterwards, and during the said voyage, that is to say, on the twentieth of April in the year aforesaid, the said ship having the said goods and merchandizes on board, sailing and proceeding on her said voyage, after her departure from St. Thomas Island, and before her arrival at H. aforesaid, in the high seas, was, by and through the mere *danger of the seas*, and the force and violence of the winds and waves, and by means of stormy tempestuous weather, greatly damaged and opened in the seams, and between the planks rendered leaky, and greatly filled with water, and the said goods and merchandizes thereby, then and there in the said voyage, were wetted, damaged, and wholly spoiled, and rendered of no use or value to the proprietors thereof; of all which, &c.

The ship cast on a rock and the goods damaged, and afterwards the ship lost.

AND the said plaintiffs further say, that the said ship, after the making of the said writing or policy of assurance, and within eighteen months after the day of her arrival in the said river Gambia, and during her stay and trade there, to wit, sixth of March 1756, was forced and cast upon a rock in the said river Gambia, and was then and there broke, shattered, and bulged, and the said goods and merchandizes, so loaden in and on board

the ſaid ſhip as aforeſaid, were thereby then and there wetted, damaged, and wholly ſpoiled; and the ſaid ſhip afterwards, and within the ſpace of eighteen months from the day of her arrival in the ſaid river Gambia, and during her ſtay and trade there, to wit, on the ſame day and year aforeſaid, by force of the winds and tempeſts, was wholly loſt there in the ſaid river Gambia; of all which, &c.

The ſhip on her arrival ſeized by ſavages, and with the tackle, &c. broke in pieces and ſpoiled.

AND the ſaid plaintiffs further ſay, that long after the expiration of twenty-four hours from the arrival of the ſaid ſhip at Gambia aforeſaid, and during her abode, that is to ſay, twentieth October 1756, *certain inhabitants of Africa*, to the ſaid plaintiffs unknown, and without the default of the ſaid plaintiffs, or any of them, by force and violence ſeized the ſaid ſhip, and broke in pieces, ſhattered, and ſpoiled the ſaid ſhip, and the tackle, apparel, and furniture thereof; of all which, &c.

The ſhip damaged on her voyage by unknown perſons, and robbed.

AND the ſaid plaintiffs further ſay, that after the departure of the ſaid ſhip from Cork aforeſaid, and before the ſaid ſhip had finiſhed the ſaid intended voyage, to wit, twenty-ſeventh of January 1760, certain perſons, to the ſaid plaintiffs unknown, and without the default of the ſaid plaintiffs, or either of them, broke, damaged, and ſpoiled the body of the ſaid ſhip, and broke, ſpoiled, took, and *carried away* the tackle, apparel, ordnance, munition, artillery, boat, and furniture of the ſaid ſhip in the ſaid writing or policy of aſſurance mentioned, to the value of four hundred pounds, whereby the ſaid laſt mentioned ſhip was diſabled from performing her ſaid voyage, and did not perform the ſame, but became of no uſe to the proprietors thereof; of all which, &c.

The ſhip and goods burnt at ſea.

WAS on the high ſeas burnt and conſumed with and by *fire*; and the ſaid goods and merchandizes then being and remaining in and on board the ſaid ſhip, was thereby then and there wholly burnt and conſumed with and by fire, and wholly loſt to the owners and proprietors thereof; of all which, &c.

Intereſt in a ſhip, namely, plaintiff two thirds, and other perſons the remaining third.

AND the ſaid plaintiff further ſaith, that the ſaid P. H. one G. H. and one M. H. at the time of the making of the ſaid writing or policy of aſſurance, and from thence continually until and at the time of the loſs hereinafter mentioned, were intereſted in the ſaid ſhip to a great value, that is to ſay, to the value of one thouſand pounds, viz. at, &c. and that the ſaid writing or policy of aſſurance was procured, and cauſed to be made as aforeſaid, for the uſe and benefit of the ſaid P. H. the ſaid G. H. and the ſaid M. H. that is to ſay, as to two-third parts of the value of the ſaid laſt mentioned ſhip, for and on the behalf and for the ſole uſe and benefit of the ſaid plaintiff; and as to the remainder third part

part thereof, for, and on the behalf and benefit of the said G. H. and M. H. to wit, at, &c.

AND that the said plaintiffs, at the time of the loading of the said goods and merchandizes on board the said ship as aforesaid, and from thence continually until the time of the misfortune hereinafter mentioned, were interested in the said goods and merchandizes so laden on board the said ship, to a great value, that is to say, to the value of one thousand pounds. Plaintiffs *interested* in the cargo to a large amount.

AND the said plaintiffs further say, that at the time of the making of the said writing or policy of assurance, and from thenceforth until and at the time of the capture and loss of the said ship hereinafter mentioned, one W. B. S. B. and A. B. were interested in a moiety of the said ship to a large value, to wit, to the value of all the money ever insured for them thereupon, and that the said insurance so made as aforesaid, was made by the said plaintiffs in trust for, and for the use and benefit of the said W. B. &c. viz. at, &c. Plaintiffs say that W. B. S. B. and A. B. were interested in a moiety of ship.

FOR the assurance of one hundred pounds, upon the *body*, *tackle*, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the said ship, in the said writing or policy of assurance mentioned, and had, &c. Declarations on insurances. 1st, Insurance of body, tackle, &c. of ship.

FOR the assurance of one hundred pounds, of and upon one half or *moiety* of the said ship, in the said writing or policy of assurance mentioned, and had, &c. 2d, 100l. on moiety of ship.

FOR the assurance of two hundred pounds, upon the premises mentioned in the said writing or policy of assurance, that is to say, one hundred pounds upon the *goods* and merchandizes in the said writing or policy of assurance mentioned, and one hundred pounds upon the *body*, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the said ship in the said writing or policy of assurance mentioned, and had, &c. 3d, 200l. on goods, 100l. on ship.

FOR the assurance of one hundred pounds upon the *goods and merchandizes* in the said writing or policy of assurance mentioned, and had, &c. 4th, 100l. on goods.

AND the said plaintiff further saith, that after the said capture of the said ship, and by reason and in consequence thereof, the said A. B. &c. for whose benefit the said assurance made, before the exhibiting of his bill, to wit, twentieth of November in the last year aforesaid, at, &c. did sue, endeavour, and labour to recover the For a rateable part of expence in *endeavouring to recover* her according to terms of policy.

the aforesaid ship, and in so doing did necessarily expend a large sum of money, that is to say, six hundred pounds of lawful money of Great Britain; whereby the said defendant, according to the terms of the said policy of assurance, and of his promise and undertaking aforesaid, became liable to pay to, and ought to have paid to the said plaintiff, for the use of the said A. B. &c. the further sum of one hundred pounds, the said one hundred pounds being the *rateable part or proportion* of the expence aforesaid, which the said defendant ought to have paid and contributed in respect of the insurance aforesaid; whereof the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. had notice.

Declaration on a policy of insurance on goods on board a ship which was taken by the enemies.

LONDON, *ss.* Joachim Famin and Noel Famin complain of George Cawthorne, being in the custody, &c. for that whereas the said Joachim Famin and Noel Famin, on the thirtieth day of May A. D. 1780, at L. aforesaid, to wit, at the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants from time immemorial there used and approved of, caused to be made a certain writing or policy of insurance, purporting thereby and containing therein, that as well in own name, as for and in the name and names of all and every other person or persons to whom the same might or did appertain in part or in all, did make assurance, and cause, and them and every of them, to be insured, lost or not lost, at and from Marseilles to Nantz, warranted to sail on or before the fifth of May 1780, upon any kind of goods and merchandizes whatsoever, loaden or to be loaden on board the good ship or vessel called the Concorde, Dutch vessel, whereof was master, under God, for that present voyage, Meynders Fredricks, *or whosver else should go for master in the said ship, or by whatsoever other name* or names *the said ship*, or the *master* thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof on board the said ship at Marseilles, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at Nantz; and the same there safely landed, and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by agreement should be valued at l.: touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods or merchandizes, or any part thereof. And

And in cafe of any lofs or misfortune, it fhould be lawful for the affureds, their factors, fervants, and affigns, to fue, labour, and travel for, in and about the defence, and fafeguard, and recovery of the faid goods and merchandizes, or any part thereof, without prejudice to that infurance, to the charges whereof they the affu-rers would contribute, each one according to the rate and quanti-ty of his fum therein affured. And it was agreed by them the in-furers, that that writing or policy of affurance fhould be of as much force and effect as the fureft writing or policy of affurance there-tofore made in Lombard-ftreet, or in the Royal Exchange, or elfewhere in London; and fo they the affurers were contented, and did thereby promife and bind themfelves, each one for his own part, their heirs, executors, and goods, to the affureds, their heirs, executors, adminiftrators, and affigns, for the true per-formance of the premifes; confeffing themfelves paid for the con-fideration due unto them for that affurance by the affured, at and after the rate of twenty five guineas per cent. In witnefs where-of they the affurers had fubfcribed their names and
affured in London. And, by the faid writing or policy of affu-rance, corn, fifh, falt, fruit, flour, and feed were warranted free from average, unlefs general, or the fhip fhould be ftranded; fugar, tobacco, hemp, flax, hides, and fkins were warranted free from average under five pounds per cent. and all other goods all from average under three pounds per cent. unlefs general, or the fhip fhould be ftranded. as by the faid writing or policy of affurance, reference being thereunto had, more fully appears; of which faid writing or policy of affurance he the faid George afterwards, to wit, on the faid thirtieth day of May in the faid A. D. 1780, at L. aforefaid, in the parifh, &c. aforefaid, had notice. And thereupon afterwards, to wit, on the fame day and year laft aforefaid, at, &c. aforefaid, in confideration that the faid Joachim and Noel, at the fpecial inftance and requeft of the faid George, had then and there paid the faid George a large fum of money, to wit, the fum of twenty-nine pounds eight fhillings, of lawful money of Great Britain, as a premium or reward for the affurance of a large fum of money, to wit, the fum of one hundred and twelve pounds, of like lawful money, of and upon the premifes in the faid writing or policy of affurance contained, and had undertaken and then and there faith-fully promifed the faid George to perform and fulfil all things in the faid writing or policy of affurance contained on the part and behalf of the faid affured to be done and performed, he the faid George undertook, and then and there faithfully promifed the faid Joachim and Noel, that he the faid George would become an af-furer to the faid Joachim and Noel, to wit, for the faid fum of one hundred and twelve pounds, of and upon the faid premifes mentioned in the faid writing or policy of affurance, and that he would perform and fulfil all things in the faid writing or policy of affurance contained on his part and behalf as fuch affurer, as to the faid one hundred and twelve pounds to be performed and fulfilled,

according to the form and effect of the said writing or policy of assurance; and the said George then and there subscribed the said writing or policy of assurance as such assurer, to wit, for the said sum of one hundred and twelve pounds accordingly, that is to say, at London aforesaid, at the parish and ward aforesaid. And the said Joachim and Noel do aver, that the said ship or vessel, in the said writing or policy of assurance mentioned, at the time of the sailing thereof herein after mentioned, and from thence until and at the time of the loss thereof herein also after mentioned, was a Dutch vessel, that is to say at L. aforesaid, at the parish, &c. aforesaid ×. And the said Joachim and Noel do aver, that the said writing or policy of assurance so by them the said Joachim and Noel made as aforesaid, was by them so made *in trust for, and for the use, risk, benefit, behalf, and account of Mr. Bilmain, and of certain other persons who carried on trade and commerce in copartnership in foreign parts, under the style and firm of Gaudin, Enissard, and of certain other persons carrying on trade and commerce in foreign parts under the style and firm of Seurat and Louvel respectively, according to their respective proportions as herein after next mentioned.* And the said Joachim and Noel further say, that afterwards, to wit, on the thirtieth day of April in the said A. D. 1780, divers goods and merchandizes of the said Mr. Bilmain, of great value, to wit, of the value of two hundred and twenty pounds, of like lawful money, and divers other goods of the said Gaudin and Enissard, of great value, to wit, of the value of one hundred and fifty pounds, of like lawful money, and divers other goods of the said Seurat and Louvel, of great value, to wit, of the value of other one hundred and fifty pounds, of like lawful money, were put on board the said ship or vessel, being a Dutch vessel as aforesaid, to be carried therein upon the voyage, in the said writing or policy of assurance mentioned, to wit, at London aforesaid, in the parish, &c. aforesaid +. And the said Joachim and Noel further say, that the said ship, in the said writing or policy of assurance mentioned, to wit, at L. aforesaid, in the parish, &c. aforesaid, afterwards, and before the fifth of May in said A. D. 1780, that is to say, on said thirtieth of April in said A. D. 1780, departed and set sail from Marseilles aforesaid for and towards Nantz, in the said policy of assurance mentioned, with the said goods and merchandizes on board thereof; but that the said ship did never arrive at Nantz aforesaid in that voyage, but, on the contrary thereof, the said ship, sailing and proceeding on her said voyage, with the said goods and merchandizes on board thereof as aforesaid, after her departure from Marseilles aforesaid, and before her arrival at Nantz aforesaid, viz. on the thirtieth day of May in the year of Our Lord 1780, was, in and upon the high seas, with force and arms, and in an *hostile* manner, attacked, conquered, taken, and carried away by certain persons to the said Joachim and Noel unknown; and the said ship, and goods and merchandizes on board thereof as aforesaid, were thereby wholly lost to the pro-

Taken by enemies.

proprietors thereof, that is to say, at L. aforesaid, in the parish, &c. aforesaid; of all which premises the said George afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the parish, &c. aforesaid, had notice: and, by reason of the premises, the said George then and there became liable, and ought to have paid to the said Joachim and Noel a large sum of money, to wit, the said sum of one hundred and twelve pounds, so by him insured as aforesaid, according to the form and effect of the said writing or policy of assurance, and his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (2d Count like the first, till you come to this mark ×, then proceed thus): And the said Joachim and Noel further say, that afterwards, to wit, on the thirtieth of April in the said A. D. 1780, *divers goods and merchandizes* of great value, to wit, of the value of five hundred and twenty pounds, of like lawful money, were loaden on board the said ship, to be carried in the said ship on the voyage in the said last mentioned writing or policy of assurance mentioned, and remained on board thereof until the loss thereof hereinafter mentioned, and that the said last mentioned writing or policy of assurance, so made as last aforesaid, was made for the use, benefit, risk, and account of the owners of such goods and merchandizes last mentioned, that is to say, at London aforesaid, in the parish and ward aforesaid, &c.; (then go on from this mark + to the end of the Count, then add a Count for money had and received). Nevertheless the said George, not regarding his said several promises and undertakings by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Joachim and Noel, in this behalf hath not paid to the said Joachim and Noel, or to either of them, the said several sums of money, or either of them, or any part thereof, (although afterwards, to wit, on the twenty-fourth of February A. D. 1781, and often since, at L. aforesaid, at the parish, &c. aforesaid, requested so to do,) but to pay the same to them, or either of them, he the said George hath hitherto wholly refused, and still doth refuse, to the damage of the said Joachim and Noel of l.; and therefore they bring suit, &c. Pledges, &c. On the goods.

And the said George Cawthorne, by Robert Ellis his attorney, comes and defends the wrong and injury, when, &c., and as to the first Count of the said declaration saith, that the said first Count, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Joachim and Noel to have their aforesaid action thereof, in that respect, maintained against him; to which said first Count, and the matter therein contained in manner and form as the same are above pleaded and set forth, he the said George Cawthorne is not under any necessity, nor in any wise bound by the law of the land, to answer; and this he the said George Cawthorne is ready to verify; wherefore, for want of a sufficient Demurrer thereto.

Count to the said declaration in this behalf, he prays judgment as to the said first Count, if the said Joachim and Noel ought to have their aforesaid action thereof maintained against him. And for causes of demurrer in law to the said first Count, according to the form of the statute in such case made and provided, he the said George sets down, and shews to the Court here, the causes following; that is to say, For that it does not appear in or by the said first Count of the said declaration, that the said Joachim or Noel *had any interest* in the said writing or policy of assurance in the said first Count mentioned, or in the goods and merchandizes thereby assured; but on the contrary thereof, it appears in and by the said first Count of the said declaration, that the said writing or policy of assurance in the said first Count of the said declaration mentioned, was made *in trust* for, and for the use, risk, benefit, behalf, and account of Mr. Bilmain and certain other persons who carried on trade and commerce in copartnership in foreign parts, under the style and firm of Gaudin and Enissard, and of certain other persons carrying on trade and commerce in foreign parts, under the style and firm of Seurat and Louvel respectively, according to their respective proportions in the said first Count mentioned: and for that it does not appear, in or by the said first Count of the said declaration, that the said Joachim and Noel have any right of action whatsoever in that respect *in their own right* against the said George Cawthorne, or that they or either of them have sustained any damage or injury by the said capture and loss therein mentioned: and for that there are divers blanks and void spaces in the said first Count of the said declaration, which render the sense thereof wholly vague, uncertain, and obscure: and for that the said first Count of the said declaration is, in many other respects, uncertain, insufficient, and informal, &c. And as to the second Count of the said declaration, the said George Cawthorne saith, that the said second Count, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Joachim and Noel to have their aforesaid action thereof maintained against him; to which said second Count, and the matters therein contained in manner and form as the same are above pleaded and set forth, he the said George Cawthorne is not under any necessity, nor in anywise bound by the law of the land to answer; and this he the said George Cawthorne is ready to verify: wherefore, for want of a sufficient second Count to the said declaration in this behalf, he prays judgment as to the said second Count if the said Joachim and Noel ought to have their aforesaid action thereof maintained against him. And for causes of demurrer to the said second Count, according to the form of the statute in such case, &c. he the said George sets down, and shews to the Court here, the causes following; that is to say, For that it does not appear in or by the said second Count of the said declaration, that the said Joachim and Noel had any interest in the said writing or policy of assurance in the said second Count mentioned, or in the goods and

Causes of demurrer.

Demurrer to second Count.

Causes.

and

and merchandizes thereby aſſured; but it thereby appears that the ſaid laſt-mentioned writing or policy of aſſurance was made for the uſe, benefit, riſk, and account of the owners of ſuch goods and merchandizes in the ſaid ſecond Count mentioned; and for that the particular names of the ſaid owners of the ſaid laſt-mentioned goods and merchandizes, or any or either of them, are not nor is mentioned, expreſſed, ſpecified, or declared in or by the ſaid ſecond Count of the ſaid declaration; and for that it does not appear in or by the ſaid ſecond Count, that the ſaid Joachim and Noel were the owners thereof; and for that it does not appear in or by the ſaid ſecond Count of the ſaid declaration, that they the ſaid Joachim and Noel have any right of action whatſoever in that reſpect in their own right againſt the ſaid George, or that they, or either of them, have ſuſtained any damage or injury by the ſaid capture and loſs in the ſaid ſecond Count mentioned; and for that there are divers blanks and void ſpaces in the ſaid ſecond Count of the ſaid declaration, which render the ſenſe thereof wholly vague, uncertain, and obſcure; and for that the ſaid ſecond Count of the ſaid declaration is in many other reſpects uncertain, inſufficient, and informal, &c. And as to the ſaid laſt Count of the ſaid declaration, the ſaid George Cawthorne ſaith, that he did not undertake or promiſe in manner and form as the ſaid Joachim and Noel have above in that behalf complained againſt him; and of this he puts himſelf upon the country; and the ſaid Joachim and Noel do the like, &c. C. RUNNINGTON.

The joinder to the above demurrers was ſigned by

GEO. WOOD.

I Have conſidered theſe demurrers, and am of opinion they will not hold. In the firſt demurrer three cauſes are aſſigned: 1ſt, Becauſe it does not appear that the plaintiffs had any intereſt in the policy or the goods inſured; 2dly, that no *right of action* appears in the plaintiffs; 3dly, that there are blanks which render the ſenſe of the declaration in thoſe parts *uncertain*. As to the firſt and ſecond cauſes, I think that by *payment of the premium*, and making the contract, the plaintiffs have an intereſt in the policy, and a right of action for a breach of the contract, and that it is ſufficient for maintaining the action, that there was *a real intereſt in ſome body*, for whoſe uſe the policy was made, in the goods loaden on board the ſhip, and loſt by the capture. And as to the third cauſe of demurrer, I do not obſerve any blanks except in the inſtrument of inſurance, called the policy; and that being the identical contract, it muſt be ſet forth as it is, and the Court will conſtrue it according to the apparent and uſual ſenſe in which it has for a great number of years had its effect amongſt merchants, and about what there is no difficulty, doubt, or uncertainty. The cauſes in the ſecond demurrer are the ſame, except that *no names of perſons are particularly ſpecified who were owners of the goods*; but I think that makes no difference, as it is ſhewn that goods were loaden on board the ſhip of more value than the ſum inſured; and that the inſurance was made for the benefit of the owners of ſuch goods: for this only became neceſſary at all ſince the act of parliament which makes inſurance without intereſt void. The blanks objected to by this demurrer are in the policy, not in the declaration; therefore my opinion is the ſame as upon the blanks mentioned in the other demurrer.

THOMAS DAVENPORT.

Declaration on two policies of insurance on ship and cargo.

THAT whereas, &c. (state the policy in the usual way). And, by the said writing or policy of assurance, the said ship therein mentioned was warranted to proceed on that voyage with sixty men, and that the said ship was equipped with twenty-two guns, eighteen and six pound shot, and sheathed with copper, as by the said writing or policy of insurance, relation being thereunto had, will more fully and at large appear; of which said writing or policy of assurance the said Thomas Parkison afterwards, to wit, on the first of November A. D. 1780, at London aforesaid, in the parish and ward aforesaid, had notice. And thereupon afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said William Jolly, at the special instance and request of the said Thomas Parkison, had then and there paid to the said Thomas Parkison a large sum of money, to wit, the sum of twenty-five pounds four shillings of lawful money of Great Britain, as a premium and reward for the insurance of three hundred pounds of and upon the ship in the said writing or policy of assurance mentioned, (and also another large sum of money, to wit, the sum of sixteen pounds sixteen shillings of like lawful money of Great Britain, as a premium and reward for the assurance of two hundred pounds, of and upon goods on board the said ship, for the voyage in the said writing or policy of assurance mentioned,) and had undertaken, and then and there faithfully promised the said Thomas Parkison to perform and fulfil every thing in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said Thomas Parkison undertook, and to the said William Jolly then and there faithfully promised, that he would become an assurer to the said William Jolly for the said sum of three hundred pounds of and upon the said ship, (and also for the said sum of two hundred pounds of and upon the said goods on board thereof as aforesaid); and the said Thomas Parkison then and there subscribed the said writing or policy of assurance, as such assurer, for the said sum of three hundred pounds (and two hundred pounds respectively) accordingly, that is to say, at London aforesaid, at the parish and ward aforesaid. And the said William Jolly in fact says, that the said writing or policy of assurance so made as aforesaid, (as to the said ship therein mentioned, and valued as aforesaid,) was so made to and for the use, benefit, and risk of himself the said William Jolly, and Peter Masters, Rebecca Elizabeth Beaty, (administratrix of Robert Beaty,) John Wood, John Marlow, Edward Stewart, and Robert Boyd, (and as to the goods on board thereof for the benefit of himself the said William Jolly;) and the said William Jolly, Peter Masters, Rebecca Elizabeth Beaty, John Wood, John Marlow, Edward Stewart, and Robert Boyd, before and at the time of the loss of the said ship hereinafter mentioned, was interested in the said ship valued as aforesaid, (and that the said W. J. before and at the time of the loss [illegible] goods on [illegible]

board the said ship to a large amount, to wit, the sum of thirty-three pounds eighteen shillings of like lawful money, that is to say, at London aforesaid, at the parish and ward aforesaid.) And the said William Jolly in fact further says, that the said ship, to wit, on the same day and year last aforesaid, sailed and proceeded from London aforesaid upon the said voyage, in the said writing or policy of assurance mentioned, with sixty men, equipped according to *the warranty aforesaid, and sheathed with copper*; and that the said ship afterwards, to wit, on the twentieth day of November in the said year of Our Lord 1780, being at Cork, in the said writing or policy of assurance mentioned, and in the course of the voyage therein also mentioned, the said ship afterwards, to wit, on the same day and year last aforesaid, sailed safely from Cork aforesaid, for and towards the West Indies in the said writing or policy of assurance mentioned, (with divers goods on board thereof to a large value and amount, to wit, to the value and amount of thirty-three pounds eighteen shillings of like lawful money, and which had been before that time loaden on board the said ship at Cork and London respectively, to be carried in the said ship to and upon the voyage in the said writing or policy of assurance mentioned, that is to say, at London aforesaid, at the parish and ward aforesaid) And the said William Jolly in fact further says, that the said ship never did arrive at any of the West India islands in the said writing or policy of assurance mentioned, but, on the contrary thereof, the said ship (with the said goods on board thereof as aforesaid) sailed and proceeded in and upon the high seas after her departure from Cork aforesaid, and before her arrival at any of the West India islands in the said writing or policy of assurance mentioned, to wit, on the fifth day of January in the year of Our Lord 1781, was, in and upon the high seas, with force and arms, and in an hostile manner, attacked, conquered, taken, and carried away by certain persons to the said William Jolly unknown, and thereby the said ship and goods on board thereof, to the value aforesaid, became and were totally lost to the proprietors thereof, that is to say, at London aforesaid, in the parish and ward aforesaid; of all which premises the said Thomas Parkison afterwards, to wit, on the same day and year last aforesaid, there had notice: and by reason thereof the said Thomas Parkison then and there became liable to pay, and ought to have paid to the said William Jolly the said sums of three hundred pounds (and two hundred pounds), making together the sum of five hundred pounds of like lawful money, according to the form and effect of the said writing or policy of assurance, and of his promises and undertakings in that behalf as aforesaid, that is to say, at London aforesaid, in the parish and ward aforesaid. *And whereas* also, before the making of the promise of the said Thomas Parkison hereinafter next mentioned, to wit, on the fourteenth day of August in the year of Our Lord 1780, at London aforesaid, in the parish and ward aforesaid, he the said William Jolly had caused to be made a certain

2d Count on a different ship, and on a different voyage.

certain other writing or policy of aſſurance, for the aſſurance of a certain other ſhip called the Mary, of great value, to wit, of the value of other four thouſand pounds of like lawful money, and of divers goods of great value, to wit, of the value of other three thouſand three hundred and eighteen pounds of like lawful money on board thereof, on a voyage at and from London to Cork and the Weſt India iſlands, with liberty to call at St. Euſtatia; upon which ſaid laſt mentioned writing or policy of aſſurance, he the ſaid Thomas Parkiſon, before the time of making his promiſe and undertaking hereinafter mentioned, to wit, on the ſame day and year laſt mentioned, at London aforeſaid, in the pariſh and ward aforeſaid, had become an aſſurer to the ſaid William Jolly for the (ſeveral) ſums of three hundred pounds upon the ſhip (and two hundred pounds upon the goods on board thereof). And

3d Count. whereas alſo, before the making of the promiſe of the ſaid Thomas Parkiſon hereinafter mentioned, the ſaid laſt-mentioned ſhip called the Mary, (with goods on board thereof as laſt aforeſaid in that voyage), to wit, on the fifth day of January in the ſaid year 1781, was taken by certain perſons to the ſaid William Jolly unknown, and thereby (together with the goods on board) was loſt to the proprietors thereof, to wit, at London aforeſaid, at the pariſh and ward aforeſaid; of all which laſt-mentioned premiſes he the ſaid Thomas Parkiſon afterwards, to wit, on the ſixth day of March in the ſaid year of Our Lord 1781, there had notice: and the ſaid Thomas Parkiſon being ſuch aſſurer as laſt aforeſaid, and the ſaid ſhip being ſo loſt as laſt aforeſaid, he the ſaid Thomas Parkiſon in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, undertook, and to the ſaid William Jolly then and there faithfully promiſed to pay him one hundred pounds per cent. upon his ſubſcriptions to the ſaid laſt mentioned writing or policy of aſſurance, in one month from the ſaid ſixth day of March in the ſaid year of Our Lord 1781; by reaſon whereof the ſaid Thomas Parkiſon became liable to pay to the ſaid William Jolly the (ſeveral) ſums of three hundred pounds (and two hundred pounds ſo ſubſcribed by him as laſt aforeſaid, amounting in the whole to the ſum of five hundred pounds), in one month from the ſaid ſixth day of March in the ſaid year of Our Lord 1781, that is to ſay, at London aforeſaid, at the pariſh and ward aforeſaid.

I Have joined the two policies together (notwithſtanding the intereſts are different) in the declaration according to practice. But though ſuch practice is convenient by way of ſaving multiplicity of ſuits, yet, as I cannot think it good in point of law, as it is joining of cauſes of action in different rights of the ſame action, I would adviſe application to defendant's attorney to conſent not to take any advantage of it, that cannot be refuſed, as it is for the benefit of all. The third ſpecial Count is upon the adjuſtment, and is the Count upon which I would recommend the plaintiffs to found their complaint, without going upon either of the others. Upon that Count, proof of the ſubſcription, and of the loſs, is ſufficient to throw the *onus* upon defendant to prove impoſition, with regard to the circumſtances, in order to get rid of their adjuſtment; plaintiffs, how-

however, must be prepared to prove the whole of the case, according to the first and second Counts, in case the Court should force him to prove the circumstances, under the idea that they are not admitted by the adjustment: as to the strict merits, I am clear, from the face of the protest, that the policy is vacated by the cruising after the Spanish ship and thereby deviated from the direct course of the voyage. But I contend that if all the facts in the protest were known to the underwriter at the time they settled the adjustments, they have waived any benefit they might otherwise have had.

LONDON, to wit. W. B. complains of J. N. &c. being, &c. for that whereas the said W. on the twentieth day of August A. D. 1776, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants, did cause to be written and made a certain writing of insurance, commonly called a policy of insurance, whereby the said W. by the name of Mr. William Bond, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, did make insurance, and caused himself, and them and every of them, to be insured, lost or not lost, *at and from Jamaica to London, warranted to have sailed on or before the first day of August* 1776, upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called the Capel, whereof was master, under God, for that voyage, Captain C. or whosoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship, at Jamaica, upon the said ship, &c. and so should continue and endure during her abode there upon the said ship, &c. and further until the said ship, with all its ordnance, tackle, &c. &c. and goods and merchandizes whatsoever, should be arrived at London upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety; and upon the goods and merchandize until the same should be there discharged and safely landed; and it should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at, any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods, and merchandizes, for so much as concerned the assured, by agreement between the assured and assurers, in that policy were and should be valued at l.: touching the adventures and perils which they the assurers were contented to bear and take upon them in that voyage, they were of the seas, men of war, fire, enemies, frigates, rovers, thieves, jettizons, letters of mart and countermart, surprisals, takings at sea, arrests, and detainments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come, to the detriment, hurt, or damage of the said

Declaration on a policy of insurance on ship and cargo, &c.
1st Count, on ship and cargo from St. Anne's Bay to London, the ship having been captured by the Americans, stating the ship to have sailed with a convoy.
Vide Cowp. 601.

said goods and merchandizes, ship, &c. or any part thereof; and in case of any loss or misfortune, it should be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods, merchandizes, ship, &c. or any part thereof, without prejudice to the insurance; to the charges whereof they the said insurers would contribute, each one according to the rate and quantity of his sum therein insured. And it was agreed by them the assurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in Lombard-street, or in the Royal Exchange, or elsewhere in London; and so they the said assurers were contented, and did by the said policy of assurance promise and bind themselves, each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the condition due to them for that assurance by the assured, *at and after the rate of fifteen guineas per cent. to return five per cent. if* she departed with convoy, and eight per cent. without convoy, for the voyage, and arrived; and by a certain memorandum thereunder written, corn, fish, salt, fruits, flour, and seed, were warranted free from average, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins warranted free from average, under five per cent. and all other goods, also the ship and freight, were warranted free from average, under three per cent. unless general, or the ship was stranded; and by a certain other memorandum under the said policy, it was declared, that the following insurance was one half of forty hogsheads of sugar from the estate of S. H. deceased, and consigned to the said assured, and valued at twelve pounds ten shillings per hogshead, marked S. H. the other half being insured by ship or ships the ninth day of December 1776, and on rum at nine pounds per puncheon, as by the said writing or policy of insurance more fully appears; of which said writing or policy of insurance he the said Joseph afterwards, to wit, on the said twentieth day of August in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: and thereupon afterwards, to wit, on, &c., at, &c. in consideration that the said W. at the special instance and request of the said Joseph, had then and there paid to the said Joseph *the sum of fifteen guineas as a premium, and received* for the insurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance as to the said one half of forty hogsheads of sugar and rum, and had then and there faithfully promised to perform and fulfil all things in the writing or policy of insurance contained on his part and behalf to be performed and fulfilled as to the said one half of forty hogsheads of sugar and rum, he the said Joseph undertook, and to the said W. then and there faithfully promised, that the said Joseph would become an assurer to the said William for the said one hun-

hundred pounds of and upon the said premises mentioned in the said writing or policy of insurance as to the said one half of forty hogsheads of sugar and rum, and would perform and fulfil all things in the writing or policy of insurance on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds as aforesaid: and the said W. further saith, that he the said W. at the time of the making the said writing or policy of insurance, and continually from thence until and at the time of the capture and loss hereinafter mentioned, was interested in the said sugars and rum to a large value and amount, to wit, the value of all the monies ever insured thereon, to wit, at London aforesaid, &c.: and the said W. further says, that the said ship in the said writing or policy of insurance mentioned, with the said sugars and rum on board thereof, before the said first day of August in the said year of Our Lord 1776, to wit, on the twenty-first day of July in the year aforesaid, set sail and departed from St. Anne's Bay at Jamaica aforesaid, where she had been loaden and had taken on board her cargo for the said voyage, ready to perform the said voyage in the said policy mentioned, and proceeded from St. Anne's Bay aforesaid on the said voyage, to a certain place on the high seas near thereto, called Bluefields, in order to join, and for the purpose of joining, a certain convoy there, which was then about to sail from thence to Great Britain, and did then and there join the said convoy; and afterwards, to wit, on the ninth day of August in the year aforesaid, the said ship in the said writing or policy of insurance mentioned, with the said sugars and rum on board thereof, set sail and departed from Bluefields aforesaid, in company with divers other ships and vessels, and with and under the said convoy on her said voyage to the port of L. aforesaid: and the said W. further saith, that the said ship, with the said sugars and rum on board, afterwards, and before her arrival at London aforesaid, to wit, on the first day of September A. D. 1776, then sailing and proceeding on her said voyage in the high seas, was with force and arms, and in a hostile manner, attacked, conquered, and taken by certain rebellious American subjects of our lord the king, and by means thereof the said sugars and rums became and were wholly lost to the said W.; of all which said premises the said Joseph afterwards, to wit, on the first day of October in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there requested by the said William to pay him the said sum of one hundred pounds so insured as aforesaid, and which the said Joseph ought to have paid to the said William, according to the form and effect of the said policy, and his said promise and undertaking so made as aforesaid. And whereas also the said W. on, &c. at, &c. according to the custom of merchants, did cause to be written and made a certain other writing of insurance, (the policy set out the same as in first Count,) as by the said writing or policy of assurance last mentioned more fully appears; of

2d Count on same policy, the ship having been captured by pirates, stating ship to have sailed with a convoy.

of which said last mentioned writing or policy of assurance the said Joseph, to wit, on the said twentieth day of August in the year aforesaid, at, &c. had notice; and thereupon afterwards, to wit, on the same day and year last aforesaid, at, &c. in consideration, that the said W. at the special instance and request of the said Joseph, had then and there paid to the said Joseph the sum of other fifteen guineas as a premium or reward for the assurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance last mentioned as to the one half of forty hogsheads of sugar and rum, and had then and there undertaken, and faithfully promised the said Joseph, to perform and fulfil all things in the said last-mentioned policy of assurance, contained on the part and behalf of the said last mentioned assured, to be performed as to the said one half of forty hogsheads of sugar and rum last mentioned, he the said Joseph undertook, and to the said William then and there faithfully promised, that he the said Joseph would become an assurer to the said William for the said one hundred pounds of and upon the premises mentioned in the said writing or policy of assurance last mentioned, as to the said last mentioned one half of forty hogsheads of sugar and rum, and would perform and fulfil all things in the said last mentioned writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds last mentioned; and the said Joseph then and there became and was an assurer to the said William, and then and there subscribed the said last mentioned writing or policy of assurance, as such assurer, as to the said last mentioned one hundred pounds as aforesaid: and the said W. further says, that he the said William, at the time of making the said last mentioned writing or policy of assurance, and continually from thence until and at the time of the capture and loss hereinafter mentioned, was interested in the said last mentioned sugar and rum to a large value and amount, to wit, the value and amount of all the money ever insured thereon, i. e. at, &c.: and the said W. further says, that the said ship in the said last mentioned writing or policy of assurance mentioned, with the said sugar and rum on board thereof, before the said first day of August 1776, to wit, on the said twenty-sixth day of July in the year last aforesaid, set sail and departed from St. Anne's Bay, at Jamaica aforesaid, where she had been loading and taking on board her cargo for the said voyage, ready to perform the said voyage in the said last mentioned policy, and proceeded from St. Anne's Bay aforesaid, on the said last mentioned voyage, to a certain place on the high seas, near thereto, called Bluefields, in order to join, and for the purpose of joining, the said convoy there, which was then about to sail from thence to Great Britain, and did then and there join the said convoy; and afterwards, to wit, on the said ninth day of August in the year aforesaid, the said ship, in the said last mentioned writing or policy of insurance mentioned, with the sugars and rum on board thereof, set sail and departed from Bluefields aforesaid, in company with

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divers other ships and vessels, and with and under the said convoy on the said voyage, for the port of London aforesaid: and the said William further says, that the said last mentioned ship, with the said sugars and rum on board thereof, afterwards, and before their arrival at London aforesaid, to wit, on the said first day of September in the said A. D. then sailing and proceeding on her said voyage last mentioned, on the high seas, was with force and arms, and in a hostile manner, attacked, conquered, *taken by pirates*; and by means thereof the said sugars and rum last mentioned became and were wholly lost to the said W. B.; of all which said premises last aforesaid the said J. afterwards, to wit, on the first day of October in the year aforesaid, at, &c. had notice; and was then and there requested by the said W. to pay to him the said last mentioned sum of one hundred pounds so assured as last aforesaid, and which the said J. ought to have paid to the said W. according to the form and effect of the said last mentioned policy, and his said promise and undertaking so made as last aforesaid. And whereas also the said W. on, &c. at, &c. did cause to be written or made a certain other writing or policy of assurance, (the policy set out as before,) as by the said writing or policy of assurance last mentioned more fully appeared; of which said last mentioned writing or policy of assurance he the said Joseph afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on the said day and year last aforesaid, at, &c. in consideration that the said W. at the special instance and request of the said John, had then and there paid to the said John the sum of other fifteen guineas, as a premium or reward for the assurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of assurance last mentioned, as to the said one half of the said forty hogsheads of sugars and rum last mentioned, and had then and there undertaken and faithfully promised the said Joseph to perform and fulfil all things in the said last mentioned writing or policy of assurance contained on the part and behalf of the assureds to be performed and fulfilled as to the said one half of forty hogsheads of sugar and rum last mentioned, he the said Joseph undertook, and to the said W. then and there faithfully promised, that he the said Joseph would become an assurer to the said William for the said one hundred pounds last mentioned of and upon the premises mentioned in the said writing or policy of assurance mentioned, as to the said one half of forty hogsheads of sugar and rum last mentioned, and would perform and fulfil all things in the said last mentioned writing or policy of assurance on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds as last mentioned: and the said W. further says, that the said William, at the time of the making the said last mentioned writing or policy of assurance, and continually from thence, until and at the time of the capture and loss hereinafter next mentioned, was interested in the said last mentioned sugar and rum to a large value and amount, to wit, to the value and amount of all the monies insured thereon, that is to say, at

3d Count like the first, omitting that the ship failed with a convoy.

L. aforefaid, &c.: and the faid W. further fays, that the faid fhip in the faid laft mentioned writing or policy of infurance mentioned, with the faid fugars and rum laft mentioned on board thereof, before the faid firft day of Auguft A. D. 1776, to wit, on the twenty-fixth day of July in the year aforefaid, *fet fail and departed from Jamaica aforefaid for and upon the faid laft mentioned voyage*; and the faid laft mentioned fhip, with the fugars and rum on board thereof, afterwards, and before her arrival at L. aforefaid, to wit, on the firft day of September A. D. 1776, then failing and proceeding on her faid voyage on the high feas, was with force and arms, and in a hoftile manner, attacked, conquered, and taken by certain rebellious American fubjects of our faid lord the king, and by means thereof the faid fugars and rum became and were wholly loft to the faid W. B.; of all which premifes laft aforefaid the faid Jofeph afterwards, to wit, on the faid firft day of October in the year laft aforefaid, at, &c. had notice; and was then and there requefted by the faid W. to pay him the faid laft mentioned fum of one hundred pounds fo affured as laft aforefaid, and which the faid Jofeph ought to have paid to the faid William, according to the form and effect of the faid laft mentioned policy, and his promife and undertaking fo made as laft aforefaid. (Fourth Count, money had and received, one hundred pounds; and breach.)

Plea 1ft, General Iffue.

And the faid Jofeph, by T. H. his attorney, comes and defends the wrong and injury, when, &c. and as to the faid promife and undertaking in the faid declaration firft, fecondly, and thirdly mentioned, and alfo as to the faid promife and undertaking in the faid declaration laft above mentioned, fays, that he did not promife and undertake in manner and form as the faid William hath above complained againft him; and of this he puts himfelf upon the country, &c.; and the faid W. doth the like. And as to the faid promife and undertaking in the faid declaration laft above mentioned as to fifteen guineas, parcel of the faid one hundred pounds therein contained, the faid Jofeph fays, that the faid William ought not to have or maintain his faid action to recover any damages by reafon of the non-payment of the faid fum of fifteen guineas, becaufe he fays, that after the making of the faid promife and undertaking in the faid declaration laft above mentioned as to the faid fifteen guineas, and before the day of exhibiting the bill of the faid W. to wit, on the firft day of October A. D. 1776, at, &c. he the faid Jofeph tendered and offered to pay to the faid W. the faid fifteen guineas, which the faid W. then and there refufed to accept from the faid Jofeph: and the faid J. further fays, that he the faid Jofeph, from the time of the making of the promife and undertaking in the faid declaration laftly mentioned as to the faid fifteen guineas, hitherto always hath been, and ftill is, ready to pay to the faid William the faid fifteen guineas; and the faid Jofeph brings the fame into court, ready to be paid to the faid W. if the faid W. would accept the fame from the faid Jofeph; and this he is ready to verify; wherefore he prays judgment,

2d Plea, as to laft Count, tender of fifteen guineas.

ment, if the said W. ought to have his aforesaid action for recovery of damages, by reason of the non-payment of the said sum of fifteen guineas, against him, &c.

And hereupon the said W. freely accepts the said sum of fifteen guineas so brought here into court; wherefore the said William is satisfied as to the said fifteen guineas, and the said Joseph is thereof acquitted; and for trying the said issue above joined, let a jury come before our lord the king at Westminster, on next after by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there.

Acceptance of the fifteen guineas, and *venire* awarded to try the other issue.

LONDON, to wit. T. W. and H. K. complain against J. B. &c. for that whereas, on the seventh day of March 1774, to wit, at the parish of St. Mary le Bow in the ward of Cheap, the said I. H *to and for the use and benefit of one J. H.* according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said T. W. and H. K. as well in their own names as in the name or names (here set out the policy and premium); of which said writing or policy of assurance he the said James afterwards, to wit, on the same day and year aforesaid, at London aforesaid, had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said T. and H. at the special instance and request of the said James, had then and there paid to the said James fifty-two pounds ten shillings as a premium or reward for the insurance of two hundred pounds of and upon the said *ship and freight*, and had undertaken, and then and there faithfully promised the said James, to perform and fulfil all things in the said writing or policy of assurance contained on the part of the assurers to be performed and fulfilled, he the said J. undertook, and then and there promised the said T. and H. that he the said J. would become an assurer to the said T. H. for the sum of two hundred pounds upon the said ship and freight, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance, as such assurer, for two hundred pounds, to wit, at, &c.: and the said T. and H. further say, that the said ship, with divers goods and merchandizes loaded on board her, was sailing and proceeding in the course of her said voyage in the said writing or policy of assurance mentioned; and being so sailing and proceeding as aforesaid, afterwards, and after the making the said policy of assurance, to wit, on the third day of April 1776, the said ship was by force and violence upon the high seas arrested, restrained, and detained by certain people unknown to the said

Declaration on a policy of insurance of the ship Polly from Maryland to Cadiz. 1st Count, stating the ship to have been *arrested and detained* by persons unknown to plaintiff on the coast of America.

said T. and H. on the coast of America, whereby the said ship and freight in the aforesaid policy of assurance mentioned became and was totally lost: and the said T. and H. in fact say, that the interest of the said J. H. in the said ship and the said freight so assured as aforesaid, at the time of making the said writing or policy of assurance, from thence and until, and at the time of the loss aforesaid, amounted to a large sum of money, to wit, to the sum of two hundred pounds so insured as aforesaid, and of all the money ever insured or caused to be insured thereon, &c.; of all which said premises the said J. afterwards, to wit, on the first day of January 1778, at, &c. had notice: and by reason thereof he became then and there liable to pay, and was then and there requested by the said T. and H. to pay to them the said sum of two hundred pounds so by him assured as aforesaid, and which said sum the said J. then and there ought to have paid to the said T. and H. according to the form and effect of the said promise and undertaking so made by the said James in that behalf as aforesaid, to wit, at, &c. And whereas also, on the said seventh day of March 1776, at, &c. the said T. W. and H. K. for and on the behalf of the said J. H. according to the usage and custom of merchants, caused to be made a certain other writing or policy of assurance, purporting thereby, and containing therein (set out policy as before); which said writing or policy of assurance he the said J. afterwards, to wit, on same day and year aforesaid, at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said T. and H. at the special instance and request of the said James, had then and there paid to the said James the sum of fifty-two pounds ten shillings as a premium and reward for the insurance of two hundred pounds of and upon the said ship and freight in the said last mentioned policy of assurance mentioned, and had undertaken, and then and there faithfully promised the said James, to perform all things in the said policy of assurance mentioned and contained on the part and behalf of the assureds to be performed and fulfilled, he the said J. undertook, and then and there faithfully promised the said T. and H. that he the said J. would become an assurer to the said H. for the said last mentioned sum of two hundred pounds of and upon the said last mentioned ship and freight, and that he would perform and fulfil all things in the said writing or policy of insurance mentioned and contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said sum of two hundred pounds, and then and there subscribed the said last mentioned writing or policy of insurance, as such insurer, &c. to wit, at, &c.: and the said T. and H. further say, that the said last mentioned ship, with divers goods and merchandizes loaded on board, was sailing and proceeding in the course of her said voyage in the said last mentioned writing or policy of insurance mentioned; and being so sailing and proceeding as aforesaid, afterwards, and after the making the said policy of insurance, to wit, on the third day of April 1776, the said ship was by force and violence upon the high seas arrested, restrained,

2d Count on same policy, the ship having been arrested by persons unknown.

ſtrained, and detained upon the coaſt of North America, *by certain perſons acting under the command and authority of the right honourable the earl of Dunmore, his Majeſty's then lieutenant and governor-general of the colony and dominion of Virginia, and vice-admiral of the ſame*, whereby the ſaid ſhip and freight in the laſt mentioned writing or policy of aſſurance mentioned, became and were totally loſt: and the ſaid T. and H. in fact ſay, that the intereſt of the ſaid J. H. in the ſaid laſt mentioned ſhip and the ſaid laſt mentioned freight, ſo inſured as aforeſaid, at the time of the making of the ſaid laſt mentioned writing or policy of inſurance, and from thence until and at the time of the laſt mentioned loſs, amounted to a large ſum of money, to wit, the ſum of other two hundred pounds, ſo inſured as aforeſaid, and of all the money ever inſured or cauſed to be inſured thereon, at, &c.; of all which premiſes the ſaid James afterwards, to wit, on the ſaid third day of June 1778, at, &c. had notice: and by reaſon thereof, he became then and there liable to pay, and was then and there requeſted by the ſaid J. H. to pay to them the ſaid laſt mentioned ſum of two hundred pounds ſo by them inſured as aforeſaid, and which ſaid ſum the ſaid James ought to have paid to the ſaid T. and H. according to the form and effect of the promiſe and undertaking ſo made by the ſaid James in that behalf, as laſt aforeſaid, to wit, at, &c. And whereas alſo (another Count, preciſely the ſame as the laſt, except the following words, inſtead of thoſe in italic in the laſt Count: " enemies of our ſaid ſovereign lord the king, and who had taken up arms againſt our ſaid lord the king upon the coaſt of America." (Money had and received; general breach.)

Drawn by Mr. CROMPTON.

Declaration by a part owner of a ſhip on a policy of inſurance againſt the underwriter, ſtating that the ſhip was taken and *ranſomed*, and afterwards was foundered and loſt, *per quod*, &c.

(SET out policy, premium, &c.) And the ſaid D. then and there became an aſſurer to the ſaid H. and ſubſcribed the ſaid writing or policy of aſſurance as ſuch aſſurer, as to the ſaid one hundred pounds: and the ſaid P. in fact ſays, that the ſaid ſhip, at the time of making the ſaid writing or policy of aſſurance, to wit, on the thirtieth day of October, in the year aforeſaid, was in ſafety, to wit, at S. aforeſaid, in the ſaid writing or policy of aſſurance mentioned, and afterwards, i. e. on the ſecond day of November 1762, the ſaid ſhip, with divers goods and merchandizes on board her, ſet ſail, and departed from S. aforeſaid, on her ſaid intended voyage towards C. aforeſaid, in the ſaid writing or policy of aſſurance mentioned: and the ſaid P. further ſays, that afterwards, and while the ſaid ſhip was ſailing and proceeding on her ſaid intended voyage, and before her arrival at C. aforeſaid, i. e. on the tenth day of November 1762, the ſaid ſhip was with force and arms, and in a hoſtile manner, attacked, conquered, and taken as a prize by certain enemies of our lord the now king, that is to ſay, by certain ſubjects of the French king, then being at enmity and open war with our ſaid lord the now king: and thereupon the ſaid J. H. who was maſter of the ſaid ſhip as aforeſaid,

ſaid, afterwards, to wit, on the day and year laſt mentioned, on behalf of the ſaid P. and the ſeveral other owners of ſhares in the ſaid ſhip, ranſomed the ſaid ſhip from the aforeſaid enemies of our ſaid lord the king for a large ſum of money, i. e. for the ſum of l. to be paid by the ſaid P. and the ſeveral other owners of ſhares in the ſaid ſhip, for the ſaid ranſom thereof: and the ſaid P. further ſays, that afterwards, to wit, on the ſame day and year laſt mentioned, the aforeſaid ſhip being ſo ranſomed as aforeſaid, and being thereupon reſtored and delivered back by the ſaid enemies of our ſaid lord the king to the ſaid T. H. for the uſe of the ſaid P. and to the ſaid other owners of ſhares in the ſaid ſhip, the ſaid ſhip proceeded and failed on her ſaid intended voyage towards C. aforeſaid; and that afterwards, and during the courſe of that voyage, and before the arrival of the ſaid ſhip at C. aforeſaid, to wit, on the twentieth day of November aforeſaid, the ſaid ſhip, on the high ſeas, by force and violence of the winds and waves, and by the perils and misfortunes of the ſea, foundered, wrecked, and ſunk in the ſea; and thereby the ſaid ſhip, and all the intereſt of the ſaid P. therein became wholly loſt to him the ſaid P. to wit, at L. &c.: and the ſaid P. in fact ſays, that he the ſaid P. at the time of making the inſurance aforeſaid, and at the time of the ſaid capture, and alſo at the time of the *total loſs* of the ſaid ſhip, was owner of a large ſhare or part, that is to ſay, an eighth part of the ſaid ſhip, and was intereſted therein to a great value and amount, to wit, to the amount and value of two hundred pounds; and that he the ſaid P. after the ſaid capture and ranſom of the ſaid ſhip, to wit, on the day and year laſt mentioned, at, &c. was obliged to pay, and did actually pay, as his ſhare or proportion of the ſaid price or expence of ranſoming the ſaid ſhip, upon the capture aforeſaid, a large ſum of money, to wit, fifty pounds, &c.; of all which premiſes the ſaid D. afterwards, to wit, on the firſt day of March 1763, at, &c had notice: and by reaſon of the ſaid premiſes, he the ſaid D. ought, according to the intent and effect of his ſaid promiſe and undertaking aforeſaid, to have paid to the ſaid P, a large ſum of money, to wit, fifty pounds, on account of the ranſom aforeſaid, and the further ſum of one hundred pounds on account of the ſaid total loſs of the ſaid ſhip; which ſaid ſums of fifty pounds and one hundred pounds make together the ſum of one hundred and fifty pounds. Neverthel ſs, &c.

Declaration on a policy of aſſurance by the owner of ſlaves inſured from Africa to N. America, ſtating that the ſhip was detained by contrary winds, and *per quod* ſeveral were obliged to

LONDON, ſſ. W. Gregſon, &c. &c. complains of Thomas Gilbert, being, &c. for that whereas the ſaid plaintiffs on the third day of July 1781, at, &c. according to the uſage and cuſtom of merchants, cauſed a certain writing or policy of aſſurance to be made in the name of the ſaid William, but for the uſe, benefit, and intereſt, and on the joint account of the ſaid plaintiffs, where-

rendered foul and leaky, and by reaſon of the delay, there was a want of water; of the ſlaves died, others jumped overboard and periſhed, and the reſt of the crew throw others overboard, for the preſervation of their own lives.

by

by the said William, as well in his own name as for and in the name and names of all and every person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from the coast of Africa, and during his trade and stay there, and to his discharging port or ports in the British West Indies, or conquered islands, upon every kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called the Zong, whereof was master, under God, for the voyage, Collingwood, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship, and upon the same ship, &c. and should continue and endure, during her abode there, upon the said ship, &c; and further, until the said ship, with all her ordnance, tackle, apparel, goods, &c. whatever, should arrive at upon the said ship, &c. until she had moored and anchored twenty-four hours in good safety, and upon the goods and merchandizes until the same be there discharged and safely landed; and should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for as much as concerned the assureds, by agreement between the assurers and assureds in this policy, were and should be valued at the sum of upon the whole of the ship, and on goods as interest appeared, valuing slaves at thirty pounds sterling per head, &c. without further account to be given by the assured for the same, touching, &c. insurance twenty pounds per cent; and in case of loss, which God forbid, the assurers not to make up any average loss under five pounds per cent, unless general. In witness whereof, they the assureds had subscribed their names and sums assured in Liverpool: and, by the said writing or policy of assurance, corn, salt, fish, fruit, flour, and seeds, were warranted free from average, unless general, and the ship was stranded; and by the said policy of insurance it was warranted to make up no average loss by trading in boats under ten pounds per cent, and by insurrections under three per cent, as by the said writing or policy of insurance, reference being thereunto had, will more fully and at large appear; of which said writing or policy of insurance the said Thomas afterwards, to wit, on the same day and year last aforesaid, at, &c. had notice: and thereupon afterwards, to wit, on the same day and year aforesaid, at Liverpool, to wit, at London, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of forty guineas, of, &c. as a premium and reward for the assurance of two hundred pounds of and upon the premises aforesaid, mentioned in the said writing or policy of insu-

 rance,

rance, and had undertaken, and to the ſaid defendant then and there faithfully promiſed to perform and fulfil all things contained in the ſaid writing or policy of aſſurance, on the part and behalf of the inſured to be performed and fulfilled, the ſaid defendant undertook, and to the ſaid plaintiffs then and there faithfully promiſed, that he the ſaid T. would become an aſſurer for the ſaid ſum of two hundred pounds of and upon the premiſes aforeſaid, in the ſaid writing or policy of inſurance mentioned, or contained on his part and behalf as ſuch aſſurer as to the ſaid ſum of two hundred pounds to be performed and fulfilled, according to the form and effect of the ſaid writing or policy of aſſurance, and then and there ſubſcribed the ſaid writing or policy of aſſurance as ſuch aſſurer for the ſaid ſum of two hundred pounds. And the ſaid plaintiffs further ſay, that the ſaid ſhip or veſſel called, &c. after the making of the ſaid writing or policy of aſſurance, to wit, on the ſixth day of September in the year aforeſaid, was in good ſafety at the coaſt of Africa aforeſaid, and was then and there loaded with divers negro ſlaves, to wit, five hundred negro ſlaves of great value, to wit, of the value of fifteen thouſand pounds, for his ſaid voyage. And the ſaid plaintiffs further ſay, that the ſaid writing or policy of aſſurance ſo made in the name of the ſaid W. G. was made for and on behalf, and for the uſe, intereſt, and benefit, and on the joint account of the ſaid plaintiffs; and that the ſaid plaintiffs, at the time of making the ſaid writing or policy of aſſurance, and from that time, until and at the reſpective times of the damages, loſs, and misfortunes hereinafter mentioned, were intereſted in the ſaid negro ſlaves ſo loaden on board the ſaid ſhip or veſſel called the Zong, to a large value, to wit, to the value of all the money by the ſaid plaintiffs ever inſured or cauſed to be inſured thereon. And the ſaid plaintiffs further ſay, that the ſaid ſhip or veſſel called the Zong, with the ſaid negro ſlaves ſo loaden on board her as aforeſaid, and ſo being in good ſafety as aforeſaid, and having on board a reaſonable and proper quantity of water for ſuch a voyage as aforeſaid, afterwards, to wit, on the ſaid ſixth day of September 1781, departed and ſet ſail from the coaſt of Africa aforeſaid towards the iſland of Jamaica in the British Weſt Indies; and the ſame ſhip, with the ſame negro ſlaves ſo loaden on board her as aforeſaid, ſailing and proceeding on her ſaid voyage from the coaſt of Africa towards the iſland of Jamaica aforeſaid, and before her arrival there, to wit, at divers times before her ſaid arrival there, by the perils of the ſea, by violent and contrary winds, currents, and other misfortunes, was rendered foul and leaky, and was delayed, hindered, and retarded in her ſaid voyage; and by reaſon thereof ſo much of the water on board the ſaid ſhip for the ſaid voyage was neceſſarily conſumed and ſpent on board the ſaid ſhip, that afterwards, and before the arrival of the ſaid ſhip or veſſel at the ſaid iſland of Jamaica aforeſaid, in her voyage aforeſaid, to wit, on the twenty-ninth day of November 1781, a ſufficient ſupply or quantity of water did not remain on board the ſame ſhip or veſſel for preſerving the lives of the maſter and mariners

riners belonging to the said ship and then on board the same, and of the said negro slaves so loaded and being on board her as aforesaid, for the residue of the said voyage; and by reason thereof afterwards, during the said voyage, and before the arrival of the said ship or vessel at the island of Jamaica aforesaid, to wit, on the said twenty-ninth day of November 1781 aforesaid, and at divers other days and times between that day and the arrival of the said ship or vessel at the island of Jamaica aforesaid, divers, to wit, sixty of the said negro slaves, then being on board the said ship or vessel, perished and died for want of water for their sustenance and support, and were wholly lost to the said plaintiffs; and divers others, to wit, forty other of the said negro slaves so loaded and being on board the said ship or vessel, for want of water for their sustenance and support, and by their extreme thirst and phrenzy occasioned thereby, were compelled to throw themselves, and did throw themselves, into the sea, and thereby perished and were drowned, and totally lost to the said plaintiffs; and the master and mariners, for the necessary preservation of their own lives and the lives of the residue of the said negro slaves on board the said ship or vessel, and which, by reason of the said insufficiency of water, occasioned by the means aforesaid, they could not have otherwise preserved, were obliged to throw overboard into the sea divers, to wit, one hundred and fifty other of the said negro slaves, whereby the said last mentioned negro slaves perished and were drowned in the sea, and were totally lost to the said plaintiffs, whereby a loss above five pounds, to wit, fifty pounds by the hundred for every hundred, of the value of the said negro slaves, so loaded on board the said ship or vessel, and insured as aforesaid, accrued thereon to the said plaintiffs; of all which premises the said defendant afterwards, to wit, on the first day of January 1783, at London aforesaid, in the parish and ward aforesaid, had notice; and by reason thereof, then and there ought to have paid to the said plaintiffs a large sum of money, to wit, the sum of one hundred pounds, in respect of the said sum of two hundred pounds, so by him insured as aforesaid, according to the form and effect of the said writing or policy of insurance, and of his said promise and undertaking in that behalf made as aforesaid. (Count for money had and received.)

Declaration on a policy of assurance of a ship for one calendar month, stating that the ship was captured by the French.

LONDON, to wit. M. W. widow, complains of W. B. being, &c. for that whereas the said Mary, on the fifteenth of September 1757, at, &c. aforesaid, according to the usage and custom of merchants from time immemorial used and approved of, caused to be made a certain writing or policy of assurance, purporting thereby and containing therein, that the said Mary W. as well in her own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and caused herself and them to be assured, lost or not lost, *for and during the space of one calendar month, from Southampton to Falmouth, and back,*

back, with liberty to touch at Guernſey, upon the body, tackle, ordnance, apparel, munition, &c. of and in the good ſhip or veſſel called the Happy Return, whereof, &c. *beginning the adventure upon the ſaid ſhip, &c. from and immediately following the third of that then inſtant September 1757, and ſo ſhould continue and endure until the ſaid ſhip, with her ſaid tackle, apparel, &c. ſhould be arrived at the full end and term of one calendar month, and there had moored at anchor twenty-four hours in good ſafety*, (here ſet out the policy,) as by the ſaid writing or policy of aſſurance, relation being thereto had, will more fully and at large appear; of which ſaid writing or policy of aſſurance the ſaid William afterwards, to wit, on the fifteenth of September 1757, at, &c. of and from the ſaid Mary had notice; and thereupon afterwards, to wit, on the day and year laſt aforeſaid, at, &c. (mutual promiſes): and the ſaid Mary avers, that the ſaid ſhip, mentioned in the ſaid writing or policy of aſſurance, before the time of making the ſaid writing, to wit, on the third of September 1757, was in good ſafety in her ſaid voyage, to wit, at Guernſey aforeſaid. And the ſaid Mary further ſays, that the ſaid ſhip, before the making of the ſaid writing or policy of aſſurance, to wit, on the fourth of September in the year aforeſaid, departed and ſet ſail from Guernſey, on her ſaid voyage to the port of Southampton aforeſaid, and that the ſaid ſhip never did arrive at the ſaid port of Southampton; but on the contrary thereof, the ſaid ſhip, ſailing and proceeding on her ſaid voyage after her ſaid departure from Guernſey aforeſaid, *and within the ſaid calendar month mentioned in the ſaid policy*, and before her arrival at the ſaid port of Southampton, to wit, on the ſixteenth of September in the year aforeſaid, on the high ſeas, was, with force and arms, and in a hoſtile manner, attacked, conquered, and taken a prize by certain perſons, enemies of our lord the now king and his crown of Great Britain, to wit, by certain Frenchmen and ſubjects of the king of France, and was by them then and there taken, and carried away as ſuch prize, and was thereby wholly loſt to the ſaid Mary, the then proprietor thereof; of all which premiſes, &c. and was then and there requeſted, &c. (Breach.)

Drawn by MR. WARREN.

Declaration by the aſſignees of a bankrupt on a policy of aſſurance on ſhip and goods, the ſhip having been loſt by the *barratry* of the maſter.

LONDON, to wit. John Craven and John Mackintos, aſſignees of the debts, goods, and effects which were of John Campbell a bankrupt, according to the form of the ſtatute made and now in force concerning bankrupts, complain of George Johnſtone, being, &c. for that whereas the ſaid J. Campbell, before he became a bankrupt, to wit, on the fifth of September 1757, at London aforeſaid, to wit, in the pariſh and ward, &c. according to the uſage and cuſtom of merchants, cauſed and procured to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein, that John Campbell, as well in his own name as for and in the name and names of all and every other perſon or perſons to whom the ſame did or might belong, in particu-

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lar or in all, did make aſſurance, and did cauſe himſelf, and every of them to be inſured, *loſt or not loſt, at and from St. Euſtatia to the Bay of Honduras, and at and from thence to Rotterdam, upon any kind of goods and merchandizes*, and alſo upon the body, &c. of and in the good ſhip and veſſel called the Royal Sloop, whereof was maſter for that preſent voyage, or whomſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatever other name or names the ſaid ſhip, or the maſter thereof, was or ſhould be named or called; *beginning the adventure upon the ſaid goods and merchandizes from the loading thereof on board the ſaid ſhip as above, or elſewhere, upon the ſaid ſhip, &c. until ſhe had moored at anchor twenty-four hours in good ſafety, and upon the goods and merchandizes until the ſame ſhould be there diſcharged and ſafely landed*; and it ſhould be lawful to and for the ſaid ſhip, &c. in that voyage to proceed and ſail to, and touch and ſtay at any ports or places whatſoever, without prejudice to that inſurance; the ſaid ſhip, &c. goods, &c. to be valued, &c. touching, &c. premium forty guineas per cent. in caſe of loſs; the aſſured to abate two per cent. as by the ſaid writing or policy of aſſurance more fully appears; under which ſaid writing or policy of aſſurance a certain memorandum was then and there written, whereby corn, &c.; of which ſaid writing or policy of aſſurance the ſaid G. J. afterwards, to wit, on, &c. at, &c. had notice: and thereupon afterwards, and before the ſaid J. C. became a bankrupt, to wit, on the ſame day and year aforeſaid, at, &c. in conſideration that the ſaid J. C. at the ſpecial inſtance and requeſt of the ſaid G. J. had then and there paid to the ſaid G. J. the ſum of as a premium and reward for the aſſurance of one hundred pounds upon the premiſes mentioned in the ſaid writing or policy of aſſurance, and had then and there undertaken and faithfully promiſed the ſaid G. J. to perform and fulfil every thing in the ſaid writing or policy of aſſurance contained, on the part and behalf of the aſſureds to be performed and fulfilled, he the ſaid G. J. undertook, and to the ſaid J. C. then and there faithfully promiſed, that he the ſaid G. J. would become an aſſurer to the ſaid J. C. for the ſum of one hundred pounds upon the premiſes in the ſaid writing or policy of aſſurance mentioned, and would perform and fulfil every thing in the ſaid writing or policy of aſſurance contained, on his part and behalf to be performed and fulfilled as ſuch aſſurer as to the ſaid ſum of one hundred pounds. And the ſaid J. C. and J. M. in fact ſay, that the ſaid ſhip, in the ſaid writing or policy of aſſurance mentioned, before the making of the ſaid writing or policy of aſſurance, was in ſafety, to wit, at St. Euſtatia, in the ſaid writing or policy of aſſurance mentioned, and afterwards departed and ſet ſail from St. Euſtatia aforeſaid, and arrived at the Bay of Honduras, in the ſaid writing or policy of aſſurance mentioned; *and that before the making of the ſaid writing or policy of aſſurance, divers goods and merchandizes of great value, to wit, of the value of three hundred pounds were loaden and put on board the ſaid ſhip to be carried and conveyed in the ſaid ſhip from the Bay of Honduras aforeſaid to Rotterdam*,

terdam, in the said writing or policy of assurance mentioned; *and that the said goods and merchandizes remained and continued on board the said ship from thence until the time of the loss hereinafter mentioned*; and that the said J. C. until and at the time of the loss hereinafter next mentioned, was interested in the said premises in the said writing or policy of assurance mentioned, to a large value, viz. to the value of all the monies by him ever insured thereon; and that the said insurance so made as aforesaid, was so made for and on account, and for the use and benefit of the said J. C. to wit, at, &c. And the said J. C. and J. M. further say, that afterwards, to wit, on the twenty-seventh of August in the year aforesaid, the said ship, with *the said goods and merchandizes so loaden on board her as aforesaid*, departed and set sail from the Bay of Honduras aforesaid, on her said intended voyage towards Rotterdam aforesaid. And the said J. C. and J. M. further say, that afterwards, and before the said J. C. became a bankrupt, and before the arrival of the said ship, and the said goods and merchandizes so loaden on board her as aforesaid, at Rotterdam aforesaid, *one John Robinson then being master of the said ship (a)*, in a barratrous and fraudulent manner, without the knowledge and against the will of the said J. C. took and carried away the said ship with the said goods and merchandizes so on board her as aforesaid (*b*), and converted and disposed thereof *to his own use*; and the said J. C. thereby lost and was deprived of the said ship, and the said goods and merchandizes so on board her as aforesaid, and the profits thereof; of all, &c.; and was then and there requested by the said J. C. to pay to him ninety-eight pounds, *part of* the said one hundred pounds so assured as aforesaid, the residue thereof being to be abated on account of the loss thereof as aforesaid, and which said ninety-eight pounds the said G. J. ought to have paid to the said J. C. before he became a bankrupt, &c. (2d Count differing from the last in particulars mentioned in the margin. 3d Count money had and received; money paid; and breach to the whole.)

(*a*) Insert in second Count the masters and mariners in and on board the said last-mentioned ship.

(*b*) Add in second Count, to places unknown to said J. C.

(c) A criminal fraud must be proved in the master; for if the goods are lost by the ignorance or negligence of the master, the underwriters are not liable, since the insured are answerable for the conduct of their servants.

Declaration on a policy of assurance on a ship and goods from Dublin to Faro, stating that the ship being shattered by tempests, the crew, for the preservation of their lives, were obliged to go into Cadiz, and were there seized upon by the King of Spain, and the ship confiscated.

(AFTER setting out the policy, and mutual promises, and that plaintiff had paid defendant a premium of five guineas, defendant became assurer for one hundred pounds, go on as follows): And the said plaintiff says, that the said ship, at the time of making the said policy of assurance, was in the port of Dublin, in parts beyond the seas, to wit, on the fourth of October

1769, at Dublin aforefaid, and divers goods and merchandizes to the value of one thoufand pounds, was fhipped and laden on board the faid fhip, and remained and continued on board the faid fhip; and that the faid fhip, with the faid goods and merchandizes fo being on board her, afterwards, to wit, on the fame day and year laft aforefaid, according to the intention of the faid writing of affurance, fet fail and departed from D. aforefaid, in her faid voyage towards F. aforefaid; and that the faid fhip, with the faid goods and merchandizes fo being on board her, failing and proceeding on her faid voyage, afterwards, and before her arrival at F. aforefaid, to wit, the thirtieth of October 1769, upon the high feas near Cadiz, in the kingdom of Spain, was fo broken and fhattered, and fuffered fo much by ftorms and tempefts, and the violence and perils of the feas, that fhe was thereby difabled and rendered wholly incapable of performing, nor did the faid fhip perform the reft of the faid voyage to F. aforefaid: and the faid plaintiffs fay, that the faid fhip being fo difabled as aforefaid, the faid M. R. her mafter and mariners belonging to and failing in her, thereupon, afterwards, to wit, on the day and year laft aforefaid, for the prefervation of their lives, were obliged to put into Cadiz aforefaid; and that the faid fhip, with the faid goods and merchandizes fo laden on board her as aforefaid, together with the mafter and mariners belonging to the faid fhip, afterwards, to wit, on, &c. at the faid port of Cadiz, by force of arms, and againft the will of the faid M. R. the mafter and mariners then belonging to and failing in the faid fhip, in a hoftile manner, was feized, taken, and detained in the faid port of Cadiz, by divers foldiers and mariners belonging to a fhip of war in the fervice of the king of Spain; and the faid goods and merchandizes were there confifcated, and thereby became totally loft as to the faid plaintiff; of all which premifes the faid C. afterwards, to wit, on the firft of November 1769, at, &c. had notice; and was then and there requefted, by the faid plaintiffs, to pay to them the fum of ninety-eight pounds, parcel of the faid fum of one hundred pounds, deducting the two pounds refidue of the faid one hundred pounds in refpect of the lofs aforefaid; which faid ninety-eight pounds he the faid Charles, according to the form and effect of the faid writing or policy of affurance, and of his promife, &c.

Declaration on a policy of affurance of a fhip, fhe having been taken by a French privateer and ranfomed, and afterwards the fhip fprung a leak, and the mafter was obliged to put into port to refit, and for want of money to deliver, part of the goods infured to defray the expence, and the other part, by reafon of the premifes, were deftroyed.

AND the faid Thomas in fact fays, that the faid policy of affurance was made by and in the names of the faid Thomas and John, for and in truft for J. R. and M. R. to wit, at, &c.: and the faid Thomas in fact further fays, that the faid fhip, mentioned in the faid policy of affurance, before the time of the making the faid writing or policy of affurance, to wit, on the tenth of October 1747, was in good fafety in Hamboro', in parts beyond

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the ſeas, to wit, at the Pells of Hambro' aforeſaid; and that afterwards, to wit, on the ſame day and year laſt aforeſaid, at H. aforeſaid, divers goods and merchandizes of the ſaid J. R. to the value of ſix hundred pounds, *not being corn*, and alſo divers goods and merchandizes of the ſaid M. R. to the value of other ſix hundred pounds not being corn, were loaden and put on board the ſaid ſhip to be carried in the ſaid ſhip from Hambro' aforeſaid, to M. Y. aforeſaid, in her ſaid voyage: and the ſaid goods and merchandizes remained and continued laden and on board the ſaid ſhip from thence until the time of the loſs of the ſaid goods and merchandizes hereafter mentioned: and ~~the ſaid F. further ſays~~, that the ſaid ſhip, with the ſaid goods and merchandizes, were ſo laden and remained on board the ſaid ſhip, from thence until the time of the loſs of the ſaid goods and merchandizes hereafter mentioned: and the ſaid F. further ſays, that the ſaid ſhip, with the ſaid goods and merchandizes ſo laden and remaining on board her, afterwards, to wit, on the fourth of October 1747 new ſtyle, departed and ſet ſail from Hambro' aforeſaid, on her ſaid voyage to Middle Yell aforeſaid; but before the arrival of the ſaid ſhip, or any part of the ſaid goods and merchandizes hereafter mentioned, at Middle Yell aforeſaid, the ſaid ſhip, with the ſaid goods and merchandizes ſo being on board her as aforeſaid, ſailed and proceeded on her ſaid voyage after her ſaid departure from H. aforeſaid; and before her arrival at M. Y. aforeſaid, to wit, on, &c. at, &c. on the high ſeas, was, with force and arms, and in a hoſtile manner, taken and ſeized as and for a prize by the then enemies of our now lord the king and this his realm, *and then being on board a privateer*, that is to ſay, by the ſubjects of the French king, then in open war with our ſaid lord the king and this his realm; and part of the ſaid goods and merchandizes of the ſaid J. R. to wit, to the value of pounds; and alſo part of the ſaid goods and merchandizes of the ſaid M. R. to wit, of the value of pounds, were then and there, with force and arms, ſeized, taken, and carried away by the ſaid enemies as and for a prize; and the ſaid ſhip, with the reſt of the ſaid merchandizes remaining on board her, were, with force and arms, kept and detained as and for a prize by the ſaid enemies, from thence until the ſaid M. R. the ſaid maſter of the ſaid ſhip, afterwards, to wit, on day of 1747 new ſtyle, on the high ſeas, agreed with the ſaid enemy, to wit, James Angel, then commander of the ſaid privateer, for the ranſom of the ſaid ſhip for a large ſum of money, to wit, for the ſum of one hundred and eighty guineas of lawful money of Great Britain, and then and there delivered to him a hoſtage, to wit, one Alexander Colvin, then a ſailor of and belonging to, and then on board the ſaid ſhip, for the ſecuring the payment thereof; which ſaid A. was kept and detained, confined and impriſoned on board the ſaid privateer, and in the kingdom of France, by reaſon thereof, for a long time, to wit, from thence until the day of then next following, when the ſaid ranſom money was paid; and the owner of the ſaid

ſhip,

ſhip called the Adventure was put to great charges for and about the maintenance and diſcharge of the ſaid A. from the ſaid confinement, and for and about his return home from thence. And the ſaid T. L. further ſaith, that after the diſcharge of the ſaid ſhip as aforeſaid, the ſame ſhip, ſailing and proceeding in the ſaid voyage, was, by force and violence of the wind and weather, and by misfortune ſprung a leak, and was greatly damaged, and wanted neceſſary repairs and amendments, without which the ſaid ſhip could not ſafely proceed on and finiſh her ſaid voyage; and the ſaid reſidue of the ſaid goods and merchandizes ſo remaining on board her as aforeſaid, were thereby greatly damaged; by reaſon whereof the ſaid ſhip was obliged to put into a bay on the coaſt of Norway, called S. in order to take care of her ſaid cargo, and to get the ſaid ſhip repaired; and the ſaid maſter took care of the ſaid cargo, and procured the ſaid ſhip to be repaired; for the payment of the charges whereof, the ſaid M. R. the ſaid maſter, not having money on board, was obliged to deliver, and did there deliver, other parts of the ſaid goods and merchandizes in ſatisfaction of the ſaid charges; and, at the end of the ſaid voyage, the reſt of the ſaid goods and merchandizes, for the cauſes aforeſaid, became and were of very little value; of which the ſaid defendant afterwards, to wit, on the firſt of June 1748, at, &c. had notice, and was then and there requeſted by the ſaid plaintiffs to pay to them one hundred and ſeventeen pounds twelve ſhillings, parcel of the ſaid one hundred and twenty pounds aſſured by the ſaid F. as aforeſaid; pounds, the reſidue of the ſaid ſum of one hundred and twenty pounds; being to be abated to the ſaid F. in reſpect of the ſaid loſs, &c. (Another Count alledging a total loſs.)

R. DRAPER.

LONDON, to wit. Plaintiff complains of defendant, being, &c. for that whereas one T. C. by the name and deſcription of T. C. &c. on the twenty-fourth of January 1770, at London aforeſaid, to wit, in the pariſh of St. Mary le Bow in the ward of Cheap, by his certain writing obligatory then and there made, and ſealed with the ſeal of the ſaid T. and which the ſaid plaintiff now brings here into court, the date whereof is the ſame day and year aforeſaid, acknowledged himſelf to be held and firmly bound to the ſaid plaintiff, by the name and deſcription of J. W. of, &c. in the ſum or penalty of two thouſand pounds, of, &c. to be paid to the ſaid plaintiff, or his certain attorney, executors, adminiſtrators, or aſſigns, whenever he the ſaid T. ſhould be thereto afterwards requeſted, with and under a certain condition thereto ſubſcribed, reciting that the ſaid plaintiff had on the day of the date of the ſaid writing obligatory lent unto the ſaid Thomas the ſum of one thouſand pounds upon the merchandizes and effects laden and to be laden on board the good ſhip or veſſel called the of the burthen of tons, or thereabouts, in the river Thames, whereof the ſaid Thomas was commander; therefore

Declaration upon an inſurance of money lent on reſpondentia on ſhip and goods going to the Eaſt Indies; which ſhip foundered at ſea before her arrival, 19. G. 3. c. 37. ſ. 5. 3 Burr. 1394.

fore the condition of that obligation was ſuch, that if the ſaid ſhip and veſſel did and ſhould, with all convenient ſpeed, proceed and ſail from and out of the ſaid river Thames, upon a voyage to any ports or places, to the Eaſt Indies, or elſewhere beyond the Cape of Good Hope, and from thence did and ſhould ſail and return into the ſaid river of Thames at or before the end or expiration of thirty-ſix calendar months, to be accounted as aforeſaid from the day of the date of the ſaid writing obligatory, and that without deviation (the dangers and caſualties of the ſeas only excepted,); and if the ſaid Thomas, his heirs, executors, and adminiſtrators, did and ſhould, within thirty days next after the ſaid ſhip or veſſel ſhould arrive in the ſaid river of Thames from the ſaid voyage, or at the end and expiration of the ſaid thirty-ſix calendar months, to be accounted as aforeſaid, which of the ſaid times ſhould firſt and next happen, well and truly pay, or cauſe to be paid unto the ſaid plaintiff, his executors, adminiſtrators, and aſſigns, the ſum of one thouſand two hundred pounds of lawful money of Great Britain, together with ten pounds of like lawful money by the calendar month, and ſo proportionately for a greater or leſſer time than a calendar month, for all ſuch time and ſo many calendar months as ſhould be elapſed and run out of the ſaid thirty-ſix calendar months over and above twenty calendar months, to be accounted from the day of the date of the ſaid writing obligatory; or if in the ſaid voyage, or within the ſaid thirty-ſix calendar months, to be accounted as aforeſaid, an utter loſs of the ſaid ſhip or veſſel, by fire, enemies, men of war, or any other caſualties, ſhould unavoidably happen, and the ſaid T. his heirs, executors, adminiſtrators, and aſſigns, did and ſhould, within ſix calendar months next after ſuch loſs, pay and ſatisfy to the plaintiff, his executors, adminiſtrators, and aſſigns, a juſt and proportionable average on all the goods and effects of the ſaid Thomas carried from England on board the ſaid ſhip or veſſel, and on all other goods and effects of the ſaid Thomas which he ſhould acquire during the ſaid voyage, and which ſhould be unavoidably loſt, then the ſaid obligation to be void and of no effect, or elſe to ſtand in full force and virtue, as by the ſaid writing-obligatory, and the condition thereof thereunder written, reference being thereunto had, appears: and the ſaid plaintiff avers, that the ſaid plaintiff, at the making of the ſaid writing obligatory, to wit, on the twenty-fourth of January 1776, at, &c. did lend to the ſaid J. C. the ſum of one thouſand pounds, at reſpondentia upon the merchandizes and effects then laden or to be laden on board the ſaid ſhip, and upon the terms, ſtipulations, and agreements in the ſaid condition ſpecified: and the ſaid plaintiff further ſays, that after the making of the ſaid writing obligatory and condition thereof, and after the lending of the ſaid one thouſand pounds as aforeſaid, to wit, on the twenty-ſixth of January 1776, at, &c. he the ſaid plaintiff, according to the cuſtom of merchants from time immemorial uſed and approved of, cauſed to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein, that the ſaid plaintiff, as well

well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and cause himself and them, and every of them, to be insured, lost or not lost, at and from London to all or any ports or places whatsoever in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, forward and backward, during her stay at each port or place, until her safe arrival back at London, upon any kind of goods and merchandizes whatsoever loaden or to be loaden on board the said good ship or vessel called the A. B. whereof was master under God for that voyage Captain J. Compton, or whoever else should go for master in the said ship or vessel, as the master thereof should be named or called; beginning the adventure upon the said goods and merchandizes from and immediately following the adventure thereof on board the said ship, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at all or any ports or places whatsoever as therein above mentioned, and back at London, and the same should be there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any port or place whatsoever, without being deemed any deviation, and without prejudice to that insurance; and the said goods and merchandizes, by agreement, were and should be upon money lent at respondentia; and in case of total loss, a bond or bonds for the same should be deemed sufficient proof of interest to recover that insurance touching the adventure, &c. (in the usual form) at and after the rate of seven pounds per cent.; and by the said writing or policy of assurance, corn, &c. as by the said writing or policy of assurance, relation being thereunto had, more fully appears; of which said writing or policy of assurance the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. had notice: and thereupon afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had paid to the said defendant the sum of fourteen pounds of, &c. as a premium and reward for the sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and had undertaken, and then and there faithfully promised the said defendant, to perform all things contained in the said writing or policy of assurance on the part and behalf of the said plaintiff, as the assured, to be done and performed by the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would become an assurer to the said plaintiff for the said sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and that he would perform and fulfil all things in the said writing or policy of assurance on his part and behalf, as such assurer, for the said sum of two hundred pounds to be performed and fulfilled, according to the tenor and effect of the said writing or policy of assurance, and then and there subscribed the said writing or policy

of assurance, as such assurer for the said sum of two hundred pounds. And the said plaintiff further says, that the said ship called the A. B. on the said condition of the said writing obligatory mentioned, and the said ship called the A. B. in the said writing or policy of assurance mentioned, were one and the same ship, and not different ships; and that the voyage in the condition in the said writing obligatory mentioned, and the voyage in, &c. are one and the same voyage, and not different voyages; and that the merchandize and effects in the said condition or writing-obligatory mentioned, and the goods and merchandize, &c. are the same goods, wares, merchandizes, and effects; and that the said sum of one thousand pounds in the said writing obligatory mentioned was and is the money insured and intended to be insured in and by the said writing or policy of assurance, and not other or different money, to wit, at, &c. And the said plaintiff further says, that the said ship, with all convenient speed, after the making of the said writing obligatory, did on her said voyage proceed and sail from and out of the said river Thames to a certain place called in the East Indies, in the said condition of the said writing obligatory named, without deviation, and afterwards in the said voyage, to wit, on, &c. did arrive in safety at the said place called in the East Indies aforesaid; and that the said T. C. afterwards, to wit, on the same day and year last aforesaid, did load and cause to be loaden on board the said ship at the said place called, &c. in the East Indies, divers merchandizes and effects to be brought from thence by the said ship in the said voyage back to the river Thames aforesaid, and to London aforesaid; and that the said ship afterwards, to wit, on, &c. did sail, proceed, and return with the said merchandizes and effects so loaden on board the said ship, without deviation in the said voyage from the said place called in the East Indies, and towards the river Thames and London aforesaid; and that afterwards, and within the said thirty-six calendar months, to be accounted from the day of the date of the said writing obligatory, and whilst the said ship, with the said merchandizes and effects so loaden on board the said ship as aforesaid, was sailing and returning in her said voyage upon the high seas from in the East Indies aforesaid, back to the aforesaid river of Thames and London aforesaid, to wit, on the twenty-fifth day of April 1771, the said ship, goods, wares, and merchandize, by and through the force of certain hurricanes of winds, stormy and tempestuous weather, and by and through the mere perils and dangers of the sea, were on the high seas unavoidably wrecked, sunk, and lost; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice; and was then and there requested by him the said plaintiff to pay to him the said sum of two hundred pounds so by him assured as aforesaid, and which said sum of two hundred pounds the said defendant then and there ought to have paid to the said plaintiff, according to the form and effect of the said writing and policy of assurance, and of his said promise and undertaking so by him made as aforesaid

ſaid in that behalf, &c. (Breach; money had and received; and breach.)

LONDON, to wit. J. L. and D. F. H. complain of R. H. being, &c. for that whereas, on the twenty-third of April 1724, at London aforeſaid, to wit, in the pariſh, &c. one H. C. as agent of, and to and for the uſe and benefit of the ſaid J. and D. cauſed to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein, that the ſaid H. C. as well in his own name as for and in the name and names of all and every (*policy of aſſurance in the uſual form, Cetta to Guernſey,*) one thouſand pounds on ſhip, and five hundred pounds on freight, as by the ſaid writing or policy of aſſurance, relation being thereto had, may more fully appear; of which ſaid writing or policy of aſſurance ſo made or written as aforeſaid, the ſaid R. H. afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on the ſame day and year laſt aforeſaid, at, &c. in conſideration that the ſaid plaintiffs, at the ſpecial inſtance and requeſt of the ſaid defendant, had paid to the ſaid defendant the ſum of pounds of, &c. as a premium or reward for the aſſurance of pounds of and upon the premiſes aforeſaid contained in the ſaid writing or policy of aſſurance as to the ſaid ſhip and freight, each valued as aforeſaid, and had undertaken, and then and there faithfully promiſed the ſaid plaintiffs to do, perform, and fulfil every thing in the ſaid writing or policy of aſſurance contained on their parts and behalf to be done, performed and fulfilled, as ſuch aſſured, as to the ſaid ſhip and freight, he the ſaid defendant undertook, and to the ſaid plaintiff then and there faithfully promiſed, that he the ſaid defendant would become an aſſurer to the ſaid plaintiff for the ſaid ſum of one hundred and fifty pounds of, &c. upon the premiſes as aforeſaid, and that he would do, perform, and fulfil every thing in the ſaid writing or policy of aſſurance contained on his part and behalf to be done, performed, and fulfilled, as ſuch aſſurer, as to the ſaid one hundred and fifty pounds of and upon the ſaid premiſes, to wit, at, &c.: and the ſaid plaintiffs in fact ſay, that the ſaid policy of aſſurance, ſo made in the name of him the ſaid H. C. was ſo made in his name to and for the uſe, benefit, riſk, and account of them the ſaid plaintiffs, and that they the ſaid plaintiffs, at the time of making the ſaid writing or policy of aſſurance, and from thence continually until and at the time of the loſs hereinafter next mentioned, were intereſted in the ſaid premiſes, in the ſaid writing or policy of aſſurance mentioned, to a great amount, to wit, to the amount of all and every the ſum and ſums of money by the ſaid plaintiffs ever inſured or cauſed to be inſured. And the ſaid plaintiffs in fact ſay, that before and at the time of the making of the ſaid writing or policy of aſſurance, to wit, on the ſaid twenty-third of April 1784, the ſaid ſhip or veſſel, in the ſaid writing or policy of aſſurance mentioned, was in ſafety at the port of Cetta in the ſaid writing or policy of aſſurance mentioned, and that divers goods and merchandizes of

Declaration on a policy of aſſurance made by an agent. Firſt Count, Loſs by barratry of the maſter generally.

great

great value, to wit, of the value of forty thousand pounds, were loaden and put on board the said ship, to be carried in the said ship from Cetta aforesaid to Guernsey aforesaid, in the said writing or policy of assurance mentioned, and that the said goods and merchandizes remained and continued on board the said ship from thence until the time of the loss hereinafter next mentioned. And the said plaintiffs further say, that the said ship or vessel, in the said writing or policy of assurance mentioned, afterwards, to wit, on the second of May 1784, with the said goods and merchandizes in and on board her as aforesaid, departed and set sail from the said port of Cetta aforesaid, upon the said intended voyage to Guernsey aforesaid, in the said writing or policy of assurance mentioned × ; and that afterwards, and before the arrival of the said ship or vessel, with the said goods and merchandizes so on board her as aforesaid, at Guernsey aforesaid, to wit, on the ninth of June 1784, the said E. A. being then such master and commander of the said ship or vessel, and on board the said ship or vessel, and the said goods and merchandizes so on board her as aforesaid, by and through the fraud and *barratry* of the said E. A. the said master of the said ship or vessel, became and were wholly lost to the said plaintiffs, and the said plaintiffs thereby lost all benefit and profit arising from the same, and the whole freight so insured as aforesaid, to wit, at, &c. in the parish, &c.; of all which premises the said defendant afterwards, and before the exhibiting of the said bill, to wit, on the first of January 1785, at, &c. had notice; and by reason thereof the said defendant became liable to pay, and ought to have paid to the said plaintiffs, the said sum of one hundred and fifty pounds so assured by him as aforesaid of and upon the premises in the said writing or policy of assurance mentioned, according to the form and effect thereof, and of his said promise and undertaking so by him made as aforesaid, in the parish and ward aforesaid. (Second Count same as first down to ×.) And the said plaintiffs further say, that the said E. A. being such master and commander of the said last mentioned ship or vessel and on board the same, and before the arrival of the said last mentioned ship or vessel at Guernsey aforesaid, the said E. A. did proceed and sail with the said last mentioned ship or vessel, and the said goods and merchandizes last mentioned being in and on board the same, to and into the port of Plymouth in the county of Devon in this kingdom, without the will, knowledge, or consent of the said plaintiffs. And the said plaintiffs further say, that whilst the said last-mentioned ship or vessel, with the said last-mentioned goods and merchandizes on board her as last aforesaid, remained and continued in the port of Plymouth aforesaid, to wit, on the ninth of June 1784, and on divers other times between that time and the time of the seizure and condemnation of the said ship or vessel hereinafter mentioned, he the said E. A. in a *barratrous and fraudulent manner, and contrary to the form of the statute in that case made and provided*, and without the knowledge, privity, and consent, and against the will of the said plaintiffs or either of them, did unship from and on board the said ship

Second Count, That the master of the ship put some smuggled brandy on board, whereby the ship became forfeited, and was afterwards seized and condemned.

ſhip or veſſel, to be laid on land in the ſaid port of Plymouth aforeſaid, divers large quantities of brandy and coffee of and belonging to him the ſaid E. A. and being in and on board the ſaid ſhip or veſſel laſt mentioned, on the account and adventure of himſelf the ſaid E. A. and not the property of, or on account or adventure of the ſaid plaintiffs, brought and imported from parts beyond the ſeas into Great Britain in the ſaid ſhip or veſſel laſt mentioned, the cuſtoms, ſubſidies, and other duties due and payable to our ſovereign lord the now king, not being firſt paid or lawfully tendered to the collectors of the ſaid cuſtoms at Plymouth aforeſaid, or to any other perſon whatſoever there or elſewhere lawfully entitled to receive the ſame, or to the ſaid collector's deputy with the conſent or agreement of the ſaid comptroller or ſurveyor there, or one of them at leaſt, nor agreed with him for the ſame at the cuſtom-houſe, according to the form of the ſtatute in ſuch caſe made and provided; whereby, and according to the form of the ſaid ſtatute, the ſaid laſt-mentioned ſhip became and was *forfeited* to our lord the king for the cauſe laſt aforeſaid; and thereupon the ſaid laſt-mentioned ſhip or veſſel was ſeized and arreſted on the behalf and account, and to and for the uſe of our ſaid lord the king, and afterwards, to wit, on the twenty-eighth of November 1784, was in due form of law condemned as forfeited, according to the form of the ſtatute in ſuch caſe made and provided; and by reaſon of the premiſes laſt aforeſaid, the laſt mentioned ſhip or veſſel, by and through the ſaid fraud and barratry of the ſaid maſter, became and was wholly loſt to the ſaid plaintiffs, and the ſaid plaintiffs thereby loſt all benefit and profit ariſing from the ſame, and the whole freight ſo inſured as aforeſaid, to wit, at, &c. whereof, &c. and by reaſon, &c. (Money had and received; an account ſtated; breach.)

Declaration on a policy of aſſurance on a ſhip and goods, that ſhe foundered and was loſt.

LONDON, to wit. For that whereas the ſaid John, on, &c. at, &c. according to the uſage and cuſtom of merchants from time immemorial uſed and approved of within this kingdom, had cauſed to be written and made a certain writing of aſſurance, commonly called a policy of aſſurance, purporting thereby, and containing therein, that the ſaid plaintiff, as well in his own name as for and in the name and names of all and every other perſon and perſons to whom the ſame did, might, or ſhould appertain in part or in all, did make aſſurance, and cauſe him and them, and every of them, to be inſured, loſt or not loſt, at and from D. to P. upon any kind of goods and merchandizes, and alſo upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ſhip or veſſel called the Two Brothers, whereof was maſter under God for that preſent voyage W. M. or whoſoever elſe ſhould go for the maſter in the ſaid ſhip, or by whatſoever other name or names the ſame ſhip, or the maſter thereof, was or ſhould be named or called, &c. &c. (ſet out the policy being an inſurance from Dover to Philadelphia upon the ſhip Two Brothers, at a certain premium, &c. &c.) as by the ſaid writing or policy of aſſurance,

aſſurance, reference being thereto had, may more fully and at large appear; of which ſaid writing or policy of aſſurance he the ſaid William afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid Thomas, at the ſpecial inſtance and requeſt of the ſaid William, had then and there paid to him the ſaid William the ſum of four guineas, that is to ſay, the ſum of four pounds four ſhillings of lawful money of Great Britain, as a premium or reward for the aſſurance of two hundred pounds of like lawful money on the ſaid ſhip and goods mentioned in the ſaid writing or policy of aſſurance, and had then and there undertaken and faithfully promiſed the ſaid William to perform and fulfil every thing in the ſaid writing or policy of aſſurance contained on the part and behalf of the aſſured to be performed and fulfilled, he the ſaid William undertook, and then and there faithfully promiſed the ſaid Thomas that he the ſaid William would become an aſſurer to him the ſaid Thomas of the ſaid ſum of two hundred pounds upon the ſhip and goods aforeſaid, and would perform and fulfil all things in the ſaid writing or policy of aſſurance contained on his part and behalf, as ſuch aſſurer, to be performed and fulfilled; and the ſaid William then and there became an aſſurer to the ſaid Thomas, and then and there ſubſcribed the ſaid writing or policy of aſſurance as ſuch aſſurer of the ſaid ſum of two hundred pounds as aforeſaid. And the ſaid Thomas further ſaith, that before the making of the ſaid writing or policy of aſſurance, to wit, on, &c. divers goods and merchandizes of a large value were laden on board the ſaid ſhip or veſſel called, &c in the ſaid writing or policy of aſſurance mentioned, in the port of D. aforeſaid, to wit, at, &c. in, &c. ×; and that at the time of the making of the ſaid writing or policy of aſſurance, and from thence and until and at the time of the loſs of the ſaid ſhip or goods hereinafter mentioned, he the ſaid Thomas was intereſted in the ſaid ſhip or veſſel, and in the ſaid goods and merchandizes, ſo laden on board of the ſaid ſhip or veſſel as aforeſaid, to a large value, to wit, to the amount of all the money by him ever inſured and cauſed to be inſured thereon, to wit, at, &c. in, &c. And the ſaid Thomas further ſaith, that the ſaid ſhip or veſſel called, &c. with the ſaid goods and merchandizes ſo laden on board thereof, afterwards, to wit, on, &c. departed and ſet ſail from the port of D. aforeſaid in her ſaid intended voyage towards and for Philadelphia in the ſaid writing or policy of aſſurance mentioned; but that the ſaid ſhip or veſſel did not arrive in ſafety at P. aforeſaid, nor finiſh her ſaid voyage; but that the ſame ſhip, and the ſaid goods and merchandizes ſo laden on board thereof as aforeſaid, afterwards, to wit, on, &c. whilſt ſailing and proceeding in his ſaid voyage towards and for Philadelphia aforeſaid, and before her arrival at P. aforeſaid, upon the high ſeas, by the danger of the ſeas, and the force and violence of ſtorms and tempeſts there, was in her ſaid voyage foundered, beat and broken to pieces, ſunk, and totally loſt in the ſea; of all which ſaid premiſes afterwards, to wit, on, &c. at, &c. had notice, and was then and

there

there requested by the said Thomas to pay him the said sum so assured as aforesaid, and which he the said William then and there ought to have paid to the said Thomas, according to the form and effect of the said writing or policy of assurance, and of the said promise and undertaking so by him made in form aforesaid: yet the said William, not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving, &c. the said Thomas in this behalf, hath not paid the said sum of two hundred pounds so assured as aforesaid, or any part thereof, to the said Thomas, but he to do this hath hitherto wholly refused, and still refuses so to do. And whereas the said Thomas, on, &c. at, &c. according to the usage, &c. had caused to be written, &c. &c. (Go on verbatim as in the first Count, reciting the policy, till you come to this mark ×, then proceed as follows:) And the said Thomas avers, that the said assurance so made by the said Thomas as last aforesaid, was made by him in trust for the use and benefit of A. B. C. D. and E. F. severally and respectively, as to their several and respective interests in the said ship and goods so assured as last aforesaid; and that at the time of the making of the said last-mentioned writing or policy of assurance, and from thence, until, and at the time of the loss of the said last-mentioned ship and vessel, and goods hereinafter mentioned, they the said A. B. C. D. and E. F. were severally and respectively interested in the said last-mentioned ship or vessel, and in the said last-mentioned goods and merchandizes so laden on board of the said last-mentioned ship or vessel as aforesaid, to a large amount, to wit, to the amount of all the money by him the said Thomas, or by the said A. B. C. D. and E. F. or any of them, ever insured or caused to be insured on their respective interests in the said last-mentioned ship or vessel and goods, to wit, at, &c. And the said Thomas in fact further says, that the said last-mentioned ship or vessel called, &c. with the said last-mentioned goods and merchandizes so laden on board thereof as aforesaid, afterwards, to wit, on, &c. at, &c. set sail, &c. &c. (Finish as in first Count to the end. Add the money Counts; insimul computasset; and common breach.)

Second Count, That assurance was made in trust for assureds severally and respectively.

G. WOOD.

LONDON, to wit. For that whereas the said plaintiffs on, &c. according to the usage and custom of merchants from time immemorial there used and approved of, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said plaintiffs, as well in their own names as for and in the name or names of all and every other person or persons to whom the same might or did appertain in part or in all, did make assurance, and cause them and every of them to be insured, lost or not lost, at and from M. to N, warranted to sail on or before the fifth day of May 1780, upon any kind of goods, &c. &c. (set out the policy,) as by the said policy, reference being thereto had, may more fully appear; of which said writing or policy

Declaration on a policy of assurance on a ship and goods made with the defendant by an agent for divers people; the ship was taken by the enemy.

of aſſurance he the ſaid George afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. in conſideration that the ſaid plaintiffs, at the ſpecial inſtance and requeſt of the ſaid George, had then and there paid the ſaid George a large ſum of money, to wit, the ſum of two pounds nine ſhillings of lawful money of Great Britain, as a premium or reward for the aſſurance of a large ſum of money, to wit, the ſum of one hundred and twelve pounds of like lawful money, of and upon the premiſes in the ſaid writing or policy of aſſurance contained, and had undertaken, and then and there faithfully promiſed the ſaid George to perform and fulfil all things in the ſaid writing or policy of aſſurance contained on the part and behalf of the aſſured to be done and performed, he the ſaid George undertook, and then and there faithfully promiſed the ſaid plaintiffs that he the ſaid George would become an aſſurer to the ſaid plaintiffs, to wit, for the ſaid ſum of one hundred and twelve pounds, of and upon the premiſes mentioned in the ſaid writing or policy of aſſurance, and that he would perform and fulfil all things in the ſaid writing or policy of aſſurance contained on his part and behalf, as ſuch aſſurer, as to the ſaid one hundred and twelve pounds, to be performed and fulfilled, according to the form and effect of the ſaid writing or policy of aſſurance; and the ſaid George then and there ſubſcribed the ſaid writing or policy of aſſurance, to wit, for the ſaid ſum of one hundred and twelve pounds, accordingly, that is to ſay, at, &c. in, &c. And the ſaid plaintiffs do aver, that the ſaid ſhip or veſſel, in the ſaid writing or policy of aſſurance mentioned, at the time of the ſailing thereof hereinafter mentioned, and from thence, until and at the time of the loſs thereof herein alſo after mentioned, was a Dutch veſſel, to wit, at, &c. × And the ſaid plaintiffs do aver, that the ſaid writing or policy of aſſurance ſo by them the ſaid plaintiffs made as aforeſaid, was ſo made in truſt for, and for the uſe, riſk, benefit, behalf and account of Mr. Vilmain, and of certain perſons who carried on trade and commerce in copartnerſhip in foreign parts under the ſtyle and firm of Gaudin and Cuiſſard, and of certain other perſons carrying on trade and commerce in foreign parts under the ſtyle and firm of Scuret and Lovel reſpectively, according to their reſpective proportions, as hereinafter next mentioned. And the ſaid plaintiffs further ſay, that afterwards, to wit, on, &c. divers goods and merchandizes of the ſaid Mr. V. of great value, to wit, of the value of two hundred and twenty pounds, of like lawful money, and divers other goods of the ſaid G. and C. of great value, to wit, of the value of one hundred and fifty pounds, of like lawful money, and divers other goods and merchandizes of the ſaid S. and L. of great value, to wit, of the value of one hundred and fifty pounds, of other like lawful money, were put on board the ſaid ſhip or veſſel, being a Dutch veſſel as aforeſaid, to be carried therein upon the voyage in the ſaid writing or policy of aſſurance mentioned; to wit, at, &c. = And the ſaid plaintiffs further ſay, that the ſaid ſhip, in the ſaid writing or policy of aſſurance mentioned, to wit, at, &c. departed and

and ſet ſail from M. aforeſaid to, for, and towards N. in the ſaid writing or policy of aſſurance mentioned, with the ſaid goods and merchandizes on board thereof, but that the ſaid ſhip did never arrive at N. aforeſaid in that voyage; but, on the contrary thereof, the ſaid ſhip, ſailing and proceeding on her ſaid voyage, with the ſaid goods and merchandizes on board thereof as aforeſaid, after her departure from M. aforeſaid, and before her arrival at N. aforeſaid, to wit, on, &c. was, in and upon the high ſeas, with force and arms, and in a hoſtile manner, attacked, conquered, taken, and carried away by certain perſons to the ſaid plaintiffs unknown; and the ſaid ſhip, and goods and merchandizes on board thereof as aforeſaid, were thereby wholly loſt to the proprietors thereof, to wit, at, &c.; of all which premiſes the ſaid George afterwards, to wit, on, &c. at, &c. had notice; and by reaſon of the premiſes the ſaid George then and there became liable to pay, and ought to have paid to the ſaid plaintiffs, a large ſum of money, to wit, the ſum of one hundred and twelve pounds, ſo by him inſured as aforeſaid, according to the form and effect of the ſaid writing or policy of aſſurance, and his ſaid promiſe and undertaking ſo by him made in that behalf as aforeſaid, to wit, at, &c. on, &c. And whereas, (&c. &c. like the firſt, to the mark ×, then proceed thus:) And the ſaid plaintiffs further ſay, that afterwards, to wit, on, &c. divers goods and merchandizes of great value, to wit, of the value of five hundred and twenty pounds, of like lawful money, were loaden on board the ſaid ſhip, to be carried in the ſaid ſhip on that voyage in the ſaid laſt mentioned writing or policy of aſſurance mentioned, and remained on board thereof until the time of the loſs thereof hereinafter mentioned; and that the ſaid laſt-mentioned writing or policy of aſſurance, ſo made as laſt aforeſaid, was made for the uſe, benefit, riſk, and account of the owners of ſuch goods and merchandizes laſt mentioned, to wit, at, &c. (then go on from this mark = to the end of the Count. Add the money Counts, and common concluſion.) 2d Count.

G. Wood.

For that it does not appear in and by the ſaid 1ſt Count of the ſaid declaration, that the ſaid writing or policy of aſſurance, in the ſaid 1ſt Count of the ſaid declaration mentioned, was made in truſt for, and for the uſe, riſk, benefit, behalf, and account of Mr. V. and of certain perſons who carried on trade and commerce in copartnerſhip in foreign parts under the ſtyle and firm of G. and C. and of certain other perſons carrying on trade and commerce in foreign parts under the ſtyle and firm of S. and L. reſpectively, according to their reſpective proportions in the ſaid 1ſt Count mentioned: and for that it does not appear in or by the ſaid 1ſt Count of the ſaid declaration, that the ſaid plaintiffs have any right of action whatſoever in that reſpect, in their own right, againſt the ſaid George, or that they or either of them have ſuſtained any damage or injury by the ſaid capture and loſs therein mentioned; and for that there are divers blanks and void ſpaces Cauſes of demurrer to the laſt declaration.

in

in the said 1st Count of the said declaration which render the sense thereof wholly vague, obscure, and uncertain: and for that the said 1st Count is in other respects uncertain, insufficient, and informal, &c. And as to the 2d Count of the declaration, the said George saith, that the said 2d Count, and the matters therein contained, &c. &c. (Causes.) For that it does not appear in or by the said 2d Count of the said declaration, that the said plaintiffs had any interest in the said writing or policy of assurance in the said 2d Count mentioned, or in the goods and merchandizes thereby assured; but it thereby appears, that the said last mentioned writing or policy of assurance was made for the use, benefit, risk, and account of the owners of such goods and merchandizes in the said 2d Count mentioned; and for that the particular names of the said owners of the said last mentioned goods and merchandizes, or any or either of them, are not nor is mentioned, expressed, specified, or declared in or by the said 2d Count of the said declaration: and for that it doth not appear in or by the said 2d Count of the said declaration, that they the said plaintiffs were the owners thereof; and for that it doth not apppear in or by the said 2d Count of the said declaration, that they the said plaintiffs have any right of action whatsoever in that respect, in their own right, against the said George, or that they or either of them have sustained any damage or injury by the said capture and loss in the said 2d Count mentioned; and for that there are divers blanks and void spaces in the said 2d Count of the said declaration which render the sense thereof wholly vague, uncertain and obscure: and for that the said 2d Count of the said declaration is in many other respects uncertain, insufficient, and informal. And as to the last Count of the said declaration, the said George saith, that he did not undertake or promise in manner and form as the said plaintiffs have above in that behalf complained against him; and of this he puts himself upon the country, &c.

C. RUNNINGTON.

Declaration on a policy of assurance on a ship and goods which was sunk by the enemies firing at her.

LONDON, to wit. Abraham Le Mesurier complains of John Saunders, being, &c. for that whereas the said plaintiff on the seventeenth day of July A. D. 1779, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused or procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said plaintiff, as well in his own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and cause him, them, and every of them, to be insured, lost or not lost, at and from latitude 45 and 53 north, longitude 6 west, to Guernsey or her first port in England, upon any kind of goods, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the

La Thetis, (a prize to the Swallow, Captain Efford,) whereof was maſter under God for that then preſent voyage A. B. or whoſoever elſe ſhould go for maſter in the ſaid ſhip, or by whatſoever name or names the ſame ſhip, or the maſter thereof, was or ſhould be named or called; beginning the adventure upon the ſaid goods and merchandizes from the loading thereof aboard the ſaid ſhip, latitude 45 and 53 north, longitude 6 weſt, upon the ſaid ſhip, &c. and ſo ſhould continue and endure during her abode there upon the ſaid ſhip, &c.; and further, until the ſaid ſhip, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatſoever, ſhould be arrived as above upon the ſaid ſhip, &c. until ſhe had moored at anchor twenty-four hours in good ſafety, and upon the goods and merchandizes until the ſame ſhould be there diſcharged and ſafely landed; and it ſhould be lawful for the ſaid ſhip, &c. in that voyage to proceed and ſail to, and touch and ſtay at any ports or places whatſoever, without prejudice to that inſurance; the ſaid ſhip, &c. goods and merchandizes, &c. for ſo much as concerned the aſſureds by agreement (ſet out the remaining part of the policy); of which ſaid writing or policy of aſſurance and memorandum ſo made as aforeſaid, the ſaid defendant afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, had then and there paid to the ſaid defendant the ſum of thirty guineas, as a premium or reward for the aſſurance of one hundred pounds upon the premiſes in the ſaid writing or policy of aſſurance mentioned, and had then and there undertaken, and faithfully promiſed the ſaid defendant to perform and fulfil every thing in the ſaid writing or policy of aſſurance contained on his part and behalf to be performed and fulfilled, the ſaid defendant undertook, and to the ſaid plaintiff then and there faithfully promiſed, that he the ſaid defendant would become an aſſurer to the ſaid plaintiff for the ſum of one hundred pounds upon the premiſes in the ſaid writing or policy of aſſurance mentioned, and would perform and fulfil every thing in the ſaid writing or policy of aſſurance contained on his part and behalf to be performed and fulfilled, as ſuch aſſurer, to the ſaid plaintiff for the ſaid ſum of one hundred pounds; and the ſaid defendant then and there became an aſſurer to the ſaid plaintiff, and ſubſcribed the ſaid writing or policy of aſſurance as ſuch aſſurer as to the ſaid one hundred pounds. And the ſaid plaintiff in fact ſaith, that the ſaid ſhip, in the ſaid writing or policy of aſſurance mentioned, before the making of the ſaid writing or policy of aſſurance, was in ſafety, to wit, upon the high ſeas, in latitude 45 and 53 north, longitude 6 weſt, to wit, at, &c. in, &c.; and that before the making of the ſaid writing or policy of aſſurance, divers goods and merchandizes of great value, to wit, of the value of ten thouſand pounds, were loaden and put on board the ſaid ſhip in the ſaid writing or policy of aſſurance mentioned; and that the ſaid goods and merchandizes remained and continued on board the ſaid ſhip from thence, until and at the time of the loſs hereinafter

next

next mentioned; and that one D. J. and P. L. were interested in the said premises, in the said writing or policy of assurance mentioned, to a large value, to wit, to the value of all the monies by the said plaintiff ever insured thereon; and that the said insurance so made as aforesaid, was so made for and on their account, and for their own use and benefit, to wit, at, &c. And the said plaintiff further saith, that afterwards, to wit, on, &c. the said ship, with the said goods and merchandizes so laden on board her as aforesaid, proceeded on the said intended voyage, and afterwards, to wit, on, &c. arrived at Cork, in the kingdom of Ireland; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: and thereupon afterwards, to wit, on, &c. at, &c. by a certain other memorandum in writing, then and there subjoined to the said policy of assurance, and signed and subscribed by the said defendant, he the said defendant gave his consent for the said ship to proceed from Cork aforesaid to Guernsey or London, and to stop at any port or ports in the Channel for convoy, and did acknowledge himself to be therein assured until her arrival at Guernsey or London, the said ship being warranted with convoy from Cork, as by the said last mentioned memorandum, subjoined to the said writing or policy of assurance, more fully appears. And the said plaintiff further says, that afterwards, to wit, on the twenty-seventh day of October in the year aforesaid, the said ship, with the said goods and merchandizes so laden on board her as aforesaid, departed and set sail with convoy from Cork aforesaid, on her said intended voyage towards Guernsey aforesaid: and the said plaintiff further saith, that afterwards, and whilst the said ship was proceeding on her said voyage, and before her arrival at Guernsey, in the said writing or policy of assurance mentioned, to wit, on the twenty-ninth day of October in the year aforesaid, the said ship, with the said goods and merchandizes so laden on board her as aforesaid, × was upon the high seas, with force and arms, and in a hostile manner, attacked and fired upon by certain men of war, to the said plaintiff unknown, and was thereby so greatly shattered and damaged in her hull, yards, masts, and rigging, that by reason thereof the said ship, with all her tackle, apparel, ordnance, munition, artillery, boat, and furniture, together with the said goods and merchandizes so laden and being on board her as aforesaid, were wholly sunk in the sea and destroyed, and became and were totally lost to the said Daniel and Peter, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises, the said defendant, afterwards, to wit, on the twelfth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there required by the said plaintiff to pay to him the said sum of one hundred pounds, so insured as aforesaid; and which said sum of one hundred pounds the said defendant ought to have paid, according to the form and effect of his said promise and undertaking so made as aforesaid.

3d Count. And whereas, &c. &c. (go on with this Count, same as the first, till you come to this mark ×, then proceed as follows): and

and failing and proceeding on her said last mentioned voyage, after her departure from Cork, and before her arrival at Guernsey aforesaid, was by and through the mere dangers of the seas, and the force and violence of the winds and waves, and by means of stormy and tempestuous weather, wrecked, foundered, and sunk in the sea, whereby the said last mentioned ship, with all her tackle, apparel, ordnance, munition, artillery, boat, and furniture, together with the goods and merchandizes so laden and being on board her as aforesaid, became and were totally lost to the said Daniel and Peter; of all which said last mentioned premises, the said defendant afterwards, to wit, on the said tenth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there requested by the said plaintiff to pay him the said last mentioned sum of one hundred pounds, so insured as last aforesaid; and which said last mentioned sum of one hundred pounds the said defendant ought to have paid to the said plaintiff, according to the form and effect of the said promise and undertaking so made as last aforesaid. (Two other Counts stating the loss of one of them to have been occasioned by the firing of the men of war, and in the other by shipwreck, as in the two preceding Counts, upon a second policy on the same ship, made on the nineteenth of July, at a premium of fifty guineas per cent. Money had and received; and common conclusion to the plaintiffs; damages five hundred pounds.)

Declaration on a policy of assurance of two-thirds of a ship.

LONDON, *ss.* For that whereas the said plaintiffs, before and at the time of the making of the writing or policy of assurance herein after mentioned, was interested in two third parts or shares in a certain ship or vessel called The Sisters, and remained so interested therein until the time of the loss and misfortune hereinafter mentioned, &c.; and the said plaintiff (*a*) being so interested as aforesaid, afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that as well, &c. (recite the policy, leaving the blanks open,) and by the same writing or policy of assurance, corn, fish, &c. (set out the memorandum) and under which said writing or policy of assurance was a certain memorandum in writing, purporting and containing therein, that the above mentioned assurance was made upon two-thirds of the said ship, and the whole of the said ship was valued at three thousand pounds, as by the said writing or, &c. and memorandum, relation being thereto had, (*b*) will more fully appear; of which said writing or, &c. and memorandum, that the said defendant afterwards, *ss.* on, &c. at, &c. had notice; and whereupon afterwards, *ss.* on, &c. last mentioned, at, &c. in consideration that the said plaintiff, at the special instance

(*a*) This is not the common or best form of declaring on a policy. It usually begins stating the policy, without any introduction.

(*b*) The day defendant subscribed.

ſtance and requeſt of the ſaid defendant, had then and there paid to the ſaid defendant the ſum of nine pounds, of, &c. as a premium for the aſſurance of two hundred pounds of and upon the premiſes mentioned in the ſaid writing or, &c. and had undertaken, and then and there faithfully promiſed the ſaid defendant to perform and fulfil the ſaid writing or, &c. in all things on his part or behalf to be performed and fulfilled as ſuch aſſured as aforeſaid, he the ſaid defendant undertook, and to the ſaid plaintiff then and there faithfully promiſed, that he the ſaid defendant would become an aſſurer to the ſaid plaintiff for the ſaid ſum of two hundred pounds of and upon the premiſes mentioned in the ſaid writing or, &c. and that he the ſaid defendant would perform and fulfil the ſame, as ſuch aſſurer, for the ſaid ſum of two hundred pounds, and then and there ſubſcribed his name to the ſaid writing or &c. as ſuch aſſurer as to the ſaid ſum of two hundred pounds: and the ſaid plaintiff further ſaith, that the ſaid ſhip, at the time of the making of the ſaid writing or, &c. was in good ſafety, *ſſ.* at the iſland of St. Lucia in the Weſt Indies, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid, and that afterwards, and before the firſt of May (*c*) in the year of Our Lord 1784, to wit, on, &c. at, &c. the ſaid ſhip or veſſel was upon the high ſeas very much eaten, damaged, and deſtroyed by worms, and thereby, and by and through the force of certain hurricanes of wind and ſtormy tempeſtuous weather, and by and through the perils and dangers of the ſeas, was rendered of no uſe and value to the ſaid plaintiff, and was thereby wholly loſt to him; of all which premiſes the ſaid defendant afterwards, to wit, on, &c. there had notice, and was by the ſaid plaintiff then and there requeſted to pay him the ſaid ſum of two hundred pounds, ſo by the ſaid defendant aſſured as aforeſaid, and which ſaid ſum of two hundred pounds the ſaid defendant then and there ought to have paid to the ſaid plaintiff, according to the tenor and effect of the ſaid writing or, &c. and of his ſaid promiſe and undertaking ſo made by him in that behalf as aforeſaid. (Count for money had and received; and common concluſion.) W. LAMB.

(*c*) Note, the inſurance was for half a year, from the firſt of November to the firſt of May.

Declaration on a policy of inſurance of goods on board ſhip.

LONDON, *ſſ.* James Blackhurſt complains of W. Cockell, eſquire, being in the cuſtody of the marſhal of the marſhalſea of our Lord the now king, before the king himſelf, in a plea of treſpaſs on the caſe; for that whereas the ſaid plaintiff, for his own uſe and benefit, heretofore, to wit, on the ninth day of December in the year of Our Lord 1784, at London, in the pariſh of St. Mary le Bow, in the ward of Cheap, according to the cuſtom of merchants in that reſpect uſed, cauſed to be effected and made a certain writing or policy of aſſurance, purporting thereby, and containing therein, that Mr. Richard Panton, as well in his own name as for and in, &c. (recite the policy verbatim, with the blanks;

blanks; for being the identical contract, it must be declared on as it is); to which said writing or policy of assurance a certain memorandum was then and there subscribed, whereby corn, &c. (set out the memorandum); and to which said writing or policy of assurance was then and there underwrote a certain other memorandum in the words following (*d*), on goods as above warranted well this ninth of December 1784; which said writing or policy of insurance, and memorandum so made thereon as aforesaid, the said defendant afterwards, to wit, on the day and year aforesaid, at, &c. on, &c. aforesaid, had notice; and thereupon afterwards, to wit, on, &c. at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the sum of twelve shillings and sixpence of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of fifty pounds of like lawful money, upon the said goods, wares, and merchandizes in the said writing or policy of assurance mentioned, and had then and there undertaken and faithfully promised the said defendant, to perform and fulfil all things in the said writing or policy of assurance mentioned on the part and behalf of the said assured to be performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiff that he the said defendant would become an insurer to the said James of and upon the said goods and merchandizes in the said writing or policy of assurance mentioned, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, to the said plaintiff for the said sum of fifty pounds, according to the form and effect of the said writing or policy of assurance; and that the said defendant then and there became an assurer to the said plaintiff, and (*e*) by one H. A. the agent of the said defendant in that behalf subscribed the said writing or policy of assurance, as such assurer, to the said sum of fifty pounds accordingly, to wit, at, &c. in, &c. And the said plaintiff in fact says, that the said ship or vessel, in the said writing or policy of assurance mentioned, before and on the said ninth day of December in the said year 1784, was in good safety, and was bound on the said voyage in the said writing or policy of assurance specified, and then, and at the time of the loss thereof hereinafter mentioned, was a British vessel; and that before and at the time of the loss thereof hereafter mentioned, divers goods, wares, and merchandizes had been, and were laden and put, and were in and on board the said ship or vessel, to be carried therein upon the said voyage in the said writing or policy of assurance aforesaid mentioned; that the said goods and merchandizes so in and on board the said ship

(*d*) The ship was warranted safe, and was safe the day she was lost. She struck at six, and went down at eight, A. M.

(*e*) The subscription was H. A. for William Cockell.

or

or vessel as aforesaid, were well as aforesaid, on the ninth of December 1784; and the said plaintiff, at the time of the lading and putting of the said goods in and on board the said ship or vessel, and from thence and at the time of the loss hereafter mentioned, was interested in the said goods and merchandizes to a large amount, to wit, to the amount of all the money ever insured by him; and the said plaintiff thereupon, to wit, at, &c. in, &c. And the said plaintiff in fact further says, that although the said ship or vessel, in the said writing or policy of assurance mentioned, departed and set sail on the said voyage in the said writing or policy of assurance mentioned, with the said goods and merchandizes in and on board her as aforesaid, yet the said ship or vessel did not arrive at Liverpool aforesaid in that voyage; but on the contrary thereof afterwards, and whilst she was proceeding on her said voyage, with the said goods, wares, and merchandizes in and on board her as aforesaid, and before her arrival at Liverpool aforesaid, to wit, *(f) on the said ninth day of December in the said year* 1784, the said ship or vessel, with the said goods and merchandizes in and on board her as aforesaid, was by and through the mere danger of the seas, and the force and violence of the winds and waves, and by the means of stormy and tempestuous weather, wrecked, foundered, and sunk in the seas, whereby the said goods and merchandizes, so laden and put on board the said ship or vessel as aforesaid, became and were totally lost, to wit, at, &c. in, &c.; of all which said premises, the said defendant afterwards, to wit, on the first day of January in the year of Our Lord 1785, at, &c. in, &c. had notice; whereby, and by means of which said several premises, the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff, a large sum of money, to wit, the sum of fifty pounds, so by him insured as aforesaid, according to the tenor and effect of the said writing or policy of assurance, and his said promise and undertaking in that behalf made as aforesaid, to wit, at, &c. in, &c. (Count for money had and received; account stated; and common conclusion.)

THO. BARROW.

(f) The day she was warranted safe.

The defendant pleaded the general issue to this declaration, and the cause came on to be tried before Lord Kenyon at Guildhall, sittings after Easter Term 29. Geo. 3. when he nonsuited the plaintiff; but on motion for a new trial Trinity Term following, the nonsuit was set aside, and a new trial granted. See the case reported 3. T. R. 360.

Declaration in C. B. in assumpsit on a policy of assurance, (*Assured v. Assurer,*) of a Greenland-man.

LONDON, to wit. Henry William Guion, late of London, merchant, was attached to answer to John Cope and Laurence Chenleson in a plea of trespass on the case, &c. and thereupon the said J. and L. by S. W. their attorney, complain, That whereas the said J. and L. heretofore, to wit, on the eleventh day of February in the year of Our Lord 1784, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom

custom of merchants in that respect used, effected and made a certain writing or policy of assurance, purporting thereby, and containing therein, that, &c. &c. (recite the policy in the very words of it) as by the said writing or policy of assurance more fully appears; which said writing or policy of assurance being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said J. and L. at the special instance and request of the said H. W. had then and there paid to the said H. W. a large sum of money, to wit, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of two hundred pounds of like lawful money, upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at two thousand four hundred pounds, and had also then and there undertaken and faithfully promised the said H. W. to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said H. W. undertook, and then and there faithfully promised the said J. and L. that he the said H. W. would become an assurer to the said J. and L. of and upon the said ship or vessel, in the said writing or policy of assurance mentioned, valued as aforesaid, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer, to the said J. and L. for the said sum of two hundred pounds, according to the form and effect of the said writing or policy of assurance, and the said H. W. then and there became an assurer to the said J. and L. and subscribed the said writing or policy of assurance, as such assurer, for the said sum of two hundred pounds accordingly, to wit, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. in fact say, that the said ship or vessel, in the said writing or policy of assurance mentioned, before and at the time of the making of the said writing or policy of assurance mentioned, was in good safety, to wit, at the port of London, and was bound from thence on the said voyage in the said writing in the said policy of assurance specified; and that they the said J. and L. at the time of making the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in the said ship or vessel, in the said writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by them insured thereon, to wit, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. further say, that the said ship or vessel, in the said writing or policy of assurance mentioned aforesaid, to wit, on the twenty-fourth day of February in the year aforesaid, departed and set sail from the said port of London on her said intended voyage in the said writing or policy of assurance mentioned, with certain goods and merchandizes in and on board her; but that after her departure, and before the completion of her said voyage, and in the course thereof, to wit, on the fourth day of

1st Count upon assurance of 200l. upon the ship in plaintiff's own right, with two other Counts.

March in the year aforesaid, the said ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals, sands, and sand-banks, and thereby became and was strained, bulged, disjointed, broke, and otherwise damaged in her body, rudder, irons, and other parts, insomuch that by means thereof, the said ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid; and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, reloaded, and repaired; and on that occasion, by reason and means of the several premises aforesaid, the said J. and L. by themselves and their servants and agents, did labour for and in and about the safeguard, safety, and preservation of the said ship or vessel; and in so doing, and in and about the repair of the same ship or vessel as to the said damage so by her sustained as aforesaid, and the other premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of lawful money of Great Britain, to wit, at L. aforesaid, in the parish and ward aforesaid; whereby the said H. W. by force, and according to the tenor and effect of the said writing or policy of assurance, and his said promise and undertaking thereupon, became liable to pay to the said J. and L. a large sum of money, to wit, the sum of one hundred pounds of like lawful money, being the (1) *rateable part or proportion* of the expence or charges aforesaid, which the said H. W. ought to have paid and (1) *contributed* in respect of the insurance aforesaid; whereof the said H. W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice. [" 2d Count same as first, only averring *insurance* " *to have been made by plaintiffs on behalf of themselves and other* " *owners, and stating the interests accordingly, viz. as follows*:] " *And the said plaintiffs in fact say, that the said ship or vessel, in* " *the said last mentioned writing or policy of assurance mentioned,* " *before and at the time of making* the said last mentioned writing " or policy of assurance, was in good safety, to wit, at the port " of London, and was bound from thence on the said voyage in " the said last mentioned writing or policy of assurance specified; " and that at the time of the making of the said last mentioned " writing or policy of assurance hereafter mentioned, the said J. " and L. and certain other persons, (to wit,) &c. were interested in the said ship or vessel, in the same writing or policy of " assurance mentioned, to a large amount, to wit, to the amount " of all the money by or for them insured thereon; and that the " said writing or policy of assurance, so effected and made by " them the said J. and L. as aforesaid, was effected and made by " them the said J. and L. in trust for, and to and for the use and " benefit

(1) 2. Burr. 1167, 1172.

2d Count on an insurance for them in their own right, and as trustees for

"benefit of them the said J. and L. and the said several other per-
"sons so interested with them in the said last mentioned ship or
"vessel as aforesaid, that is to say, according to their several and
"respective shares, interests, and proportions therein and there-
"of, to wit, at L. aforesaid, in the parish and ward aforesaid."

3d Count for 200l insured for plaintiffs in their own right upon the *bounty* payable by government.

And the said J. and L. heretofore, to wit, on the eleventh day of February in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants in that respect, effected and caused, and procured to be effected, a certain other writing or policy of assurance, purporting thereby and containing therein to the effect following, to wit, &c. &c. (recite the policy in the very words,) as by the said last mentioned writing or policy of assurance more fully appears; of which said last mentioned writing or policy of assurance the said H. W. afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice; and thereupon afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said J. and L. at the special instance and request of the said H. W. had then and there paid to the said H. W. a large sum of money, to wit, the sum of twelve pounds twelve shillings of like lawful money of Great Britain, as a premium and reward for the assurance of a large sum of money, to wit, the further sum of two hundred pounds of like lawful money, *the bounty* to arise and become payable upon and in respect of the said last mentioned ship or vessel in and from the said voyage in the said last mentioned writing or policy of assurance mentioned, by virtue of the statute in such case made and provided, and had then and there undertaken and faithfully promised the said H. W. to perform and fulfil all things in the said last mentioned writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said H. W. undertook, and then and there faithfully promised the said J. and L. that he the said H. W. would become an assurer to the said J. and L. of and upon *such bounty* as aforesaid, that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer to the said J. and L. for the said sum of two hundred pounds, according to the form and effect of the said last mentioned writing or policy of assurance; and the said H. W. then and there became an assurer to the said J. and L. and subscribed the said last mentioned policy of assurance as such assurer for the said last mentioned sum of two hundred pounds accordingly, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. in fact say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, before and at the time of the making of the said last mentioned writing or policy of assurance, was in good safety, to wit, in the port of London aforesaid, and was a British ship bound on the said voyage in the said last mentioned writing or policy of assurance specified, that is to say, to Greenland, Davis's Streights, and the

 adjacent

jacent seas, to be employed by British subjects in the whale fishery there; and that the said J. and L. at the time of the making the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested *in such bounty* to a large amount, to wit, the amount of all the money by them insured thereon, to wit, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. further say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, afterwards, to wit, on the twenty-fourth day of February in the year aforesaid, departed and set sail from the said port of London on the said intended voyage in the said writing or policy of assurance mentioned, manned and navigated as by law directed (with certain goods, wares, and merchandizes in and on board her); but that after her said departure, and before the completion of her said voyage, and in the course thereof, to wit, on the said fourth day of March in the year aforesaid, the said last mentioned ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals, sands, and sand-banks, and thereby became and was strained, bulged, disjointed, broke, and otherwise damaged in her body, rudder, rudder-irons, and other parts, insomuch that by reason thereof the said last mentioned ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid; and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said last mentioned ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain other ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, repaired, and reloaded; and on that occasion, and by reason and means of the several premises aforesaid, the said J. and L. by themselves and their servants and agents, in labour for in and about the safeguard and preservation of the said last mentioned ship or vessel as to the said damage so by her sustained as aforesaid, and other the premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid; whereby the said H. W. by force, and according to the tenor and effect of the said last mentioned writing or policy of assurance, and his aforesaid promise and undertaking thereupon, became liable to pay to the said J. and L. a large sum of money, to wit, the further sum of one hundred pounds of like lawful money, being the *rateable part* and proportion of the expences and charges last aforesaid, which the said H. W. ought to have paid and contributed in respect of the insurance last aforesaid; whereof the said H. W. afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice. V. LAWES.

Conclusion

Conclusion to each Count states, that the ship was cast upon a sand-bank, and bulged and strained so much, on her outward-bound voyage, as to make it necessary to pilot her into harbour, and attend her by another vessel, whereby plaintiffs were put to labour and expence, for which defendant became liable to pay.

Declaration on different policies of insurance, states the policies that the plaintiffs were interested in the ship to the amount of the money insured, that the ship was stranded and disabled from proceeding in her voyage without being unloaded and repaired, and for safety was piloted, whereby defendant became liable to pay 160l. being his proportion of his charges.

LONDON, ss. Henry William Guyon, late of, &c. was attached to answer John Cooper and Laurence Charleson, &c. &c. that whereas the said plaintiffs heretofore, to wit, on, &c. at, &c. according to the custom of merchants in that respect used, effected and made, and caused and procured to be effected and made, a certain writing or policy of assurance, purporting thereby and containing therein, that, &c. &c. (recite the policy,) as by the said writing or policy of assurance more fully appears; of which said writing or policy of assurance so made as aforesaid, they the said plaintiffs afterwards, to wit, on, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of two hundred pounds of like lawful money, upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at two thousand four hundred pounds, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that he the said defendant would become an assurer to the said plaintiffs of and upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at, &c. aforesaid, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled, as such assurer to the said plaintiffs for the said sum of two hundred pounds, according to the form and effect of the said writing or policy of assurance: and the said defendant then and there became an assurer to the said plaintiffs and subscribed the said writing or policy of assurance, as such assurer, for the said sum of two hundred pounds accordingly, to wit, at, &c. in, &c.: and the said plaintiffs in fact say, that the said ship or vessel, in the said writing or policy of assurance mentioned, and before and at the time of the making of the said writing or policy of assurance, was in good safety, to wit, in the port of London, and was bound from thence on said voyage in the said writing or policy of assurance specified; and that they the said plaintiffs, at the time of the making of the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in the said ship or vessel, in the said writing or policy of assurance mentioned, to a large amount, to wit,

wit, to the amount of all the money by them insured thereon, to wit, at, &c. and the said plaintiffs further say, that the said ship or vessel, in the said writing or policy of assurance mentioned, afterwards, to wit, on, &c, departed and set sail from the said port of London on the said intended voyage, in the said writing or policy of assurance mentioned, with certain goods and merchandizes in and on board her; but that after her departure, and before the completion of the said voyage, and in the course thereof, to wit, on, &c. the said ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals and sands, and sand-banks, and thereby became and was strained, bulged, and disjointed, broke, and otherwise damaged in her body, rudder, rudder-irons, and other parts, insomuch that by means thereof the said ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid, and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, reloaded, and repaired, and on that occasion, and by reason and by means of the several premises aforesaid, the said plaintiffs (*a*), by themselves and their servants and agents, did labour for in and about the safeguard, safety, and preservation of the said ship or vessel, and in so doing, and in and about the repair of the same ship or vessel as to the said damage so by her sustained as aforesaid, and of the premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of lawful money of Great Britain, to wit, at, &c. in, &c. whereby the said defendant, by force, and according to the tenor and effect of the said writing or policy of assurance, and his aforesaid promises and undertakings thereupon, became liable to pay to the said plaintiffs (*b*) a large sum of money, to wit, the sum of one hundred pounds of like lawful money of, &c. being the rateable part or proportion of the expence or charges aforesaid, which the said defendant ought to have paid and contributed in respect of the assurance aforesaid, whereof he the said defendant afterwards, to wit, on, &c. had notice. (2d Count like the first, except as to the amount of the

2d Count. interest, which in this Count runs thus.) And at the time of the making of the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, the said plaintiffs and certain other persons, to wit, A. B. C. D. &c. &c. were interested

(*a*) In the 2d Count add, "and the "said several other persons interested "with them in the said last mentioned "ship or vessel as aforesaid."

(*b*) In the 2d Count add, "for the "use and benefit of themselves, and of "the said several other persons so interested with them in the said last mentioned ship or vessel as aforesaid."

in the said ship or vessel, in the same writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by them insured thereon; and that the said last mentioned writing or policy of assurance being so effected and made by them the said plaintiffs as aforesaid, was effected and made by them the said plaintiffs in trust for, and for the use and benefit of them the said plaintiffs, and the said several other persons so interested therein or with them in the said last mentioned ship or vessel as aforesaid, that is to say, according to their several and respective shares, interest, and property therein, &c. and thereof, &c. to wit, at, &c. in, &c. (Aver the loss, and go on as before. 3d Count, after stating the policy of assurance and notice of it had by the defendant, as in the former Counts.) Thereupon, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the further sum of twelve pounds twelve shillings of like lawful money of Great Britain, as a premium and reward for the assurance of a large sum of money, to wit, the full sum of two hundred pounds of like lawful money, *the bounty* to arise and become payable upon and in respect of the said last-mentioned ship or vessel on and from the said voyage in the said last-mentioned writing or policy of assurance mentioned, by virtue of the statute in that case made and provided, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things therein contained, on the part and behalf of the assured to be performed and fulfilled, he the said defendant then and there undertook and faithfully promised the said plaintiffs, that he the said defendant would become an assurer to the said plaintiffs of and upon such bounty as aforesaid, and that he would perform and fulfil all things in the said last-mentioned writing or policy of assurance contained, on his part and behalf to be performed and fulfilled, as such assurer to the said plaintiff for the said last mentioned sum of two hundred pounds, according to the form and effect of the said last mentioned writing or policy of assurance; and the said defendant then and there became an assurer to the said plaintiffs, and subscribed the said last mentioned writing or policy of assurance, as such assurer, for the said last mentioned sum of two hundred pounds accordingly, at London aforesaid: and the said plaintiffs in fact say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, before and at the making of the said last mentioned writing or policy of assurance, was in good safety in the port of London, and was a British ship bound on the said voyage in the said last mentioned writing or policy of assurance specified, that is to say, to Greenland and the adjacent seas, to be employed by British subjects in the whale-fishing line; and that the said plaintiffs, at the time of the making of the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in such bounty as aforesaid to a large amount,

to wit, the amount of all the money insured thereon, to wit, at, &c.: and the said plaintiffs further say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, afterwards, to wit, on, &c. departed and set sail from the said port of London on the said intended voyage in the said writing or policy of assurance mentioned, and navigated, with certain goods and merchandizes in and on board her; but that after her said departure, and before the completion of the said voyage, and in the course thereof, &c. &c. (as in the 1st Count) The 4th Count like the 2d for the *bounty*, but with alterations similar to the 1st and 2d, as to the persons interested in the insurance: 5th, which states another policy of a different date upon the same ship, in which the name of the person making the insurance is left blank, valued at one thousand five hundred pounds on part of the ship, exclusive of boats and fishing tackle; that in considera ion of a premium of six pounds six shillings for the assurance of one hundred pounds upon the same part of the said ship or vessel, the defendant became an assurer upon the said freight of the said ship or vessel in the said last mentioned writing or policy of assurance mentioned, valued as aforesaid, and exclusive as aforesaid, and underwrote the said policy that the ship was then in safety; " and that at the time of the making of the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter next mentioned, the said J. P. was interested in the said part of the said ship or vessel in the said last mentioned writing or policy of assurance mentioned, exclusive as aforesaid, to a large amount, to wit, to the amount of all the money by or for him insured thereon; and that the said last mentioned writing or policy of assurance, so effected and made by them the said plaintiffs as aforesaid, was made and effected by them the said plaintiffs in trust for, and to and for the use and benefit of the said J. P. as aforesaid: (the remainder of the Count is like the foregoing, except that this states) that by means of the several premises aforesaid, the said J. P. for whose use and benefit the said last mentioned writing or policy of assurance was effected and made, by his servants and agents did labour for, &c. &c. whereby the said defendant became liable to pay to the said plaintiffs, for the use and benefit of the said J. P. for whose use and benefit the said last mentioned policy of assurance was effected and made as aforesaid, a large sum of money for his rateable proportion. The 6th Count like the 5th, but averring the interest in all the owners, like the 2d. (Counts for work and labour by plaintiffs, their servants and agents; money laid out, &c. &c.)

On a promise to settle a loss indorsed on a policy.

LANCASHIRE, *ss.* Henry Travis complains of George Warren Watts, being, &c. for that whereas the said Henry, before the promise and undertaking hereinafter next mentioned, on the thirteenth day of March 1773, at Manchester in the said county of Lancaster, according to the usage and custom of merchants, caused

caused and procured to be made a certain writing or policy of insurance, purporting thereby, and containing therein, *that certain persons, by the name and description of* Messrs. Samuel Sandys and Co. *for and on behalf of the said Henry, by the name of* C. Jarvis, as well in their own name as for and in the name and names of all and every other person or persons (set out the policy), and in case of loss (which God forbid), the assurers not to make up any average loss under five pounds per cent. unless general, as appears; *under which said writing or policy of assurance a certain memorandum was then and there written, whereby* corn, salt, fish, fruit, flour, and seeds were warranted free from average, unless general, or the ship should be stranded; and it was particularly agreed by *the said writing or policy of insurance*, that any insufficiency of the ship not known to the assured should not prejudice that insurance; of which said writing or policy of assurance, and memorandum and agreement so made as aforesaid, the said George Warren afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, had notice; and thereupon afterwards, to wit, on the same day, &c. at, &c. aforesaid, in consideration that the said Henry Jarvis, at the special instance and request of the said George Warren, had then and there paid, or caused to be paid, to the said George Warren the sum of nine guineas, as a premium and reward for the insurance of one hundred and fifty pounds of and upon the premises aforesaid, in the said writing or policy of assurance mentioned, and had undertaken and faithfully promised the said George Warren to perform and fulfil all things in the said writing or policy of insurance contained, on the part and behalf of him the said Henry Jarvis as the assured to be performed and fulfilled, he the said George Warren undertook, and to the said Henry Jarvis then and there faithfully promised, that he the said George Warren would become an assurer to the said Henry Jarvis for the said sum of one hundred and fifty pounds of and upon the premises aforesaid, in the said writing or policy of insurance mentioned, and would perform and fulfil all things in the said writing or policy of insurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred and fifty pounds; and the said George Warren then and there became an assurer to the said Henry Jarvis, and subscribed the said writing or policy of insurance as such assurer as to the said one hundred and fifty pounds: and the said Henry Jarvis in fact says, that the said ship, in the said writing or policy of insurance mentioned, before the making of the said writing or policy of insurance, was in safety, to wit, at Liverpool aforesaid, in the said county aforesaid, in the said writing or policy of insurance mentioned; and that before the making of the said writing or policy, &c. divers goods and merchandizes were laden and put on board the said ship, to be carried in the said ship from Liverpool aforesaid to the coast of Africa aforesaid, in the said writing, &c. mentioned; and that the said goods and merchandizes remained and continued on board the said ship from thence until the time of

of the loſs hereinafter mentioned; and that the ſaid Henry Jarvis, until the time of the loſs hereinafter next mentioned, was intereſted in the ſaid premiſes in the ſaid writing, &c. mentioned, upon commiſſions, privileges, and wages, to a large value, that is to ſay, to the value of all the monies by him ever inſured thereon; and that the ſaid inſurance, ſo made as aforeſaid, was ſo made for and on his own account, and for his own uſe and benefit, to wit, at Mancheſter aforeſaid, in the county aforeſaid: and the ſaid Henry Jarvis further ſays, that afterwards, to wit, on the ſame day and year aforeſaid, the ſaid ſhip, with the ſaid goods and merchandizes on board, departed and ſet ſail from Liverpool aforeſaid, on her ſaid intended voyage, for and towards the coaſt of Africa aforeſaid; and the ſaid Henry Jarvis further ſays, that afterwards, during the ſaid voyage, and as the ſaid ſhip or veſſel, with the ſaid goods and merchandizes on board thereof as aforeſaid, was proceeding and ſailing on the high ſeas on her ſaid voyage from L. aforeſaid towards the coaſt of Africa as aforeſaid, to wit, on the tenth day of May in the year aforeſaid, the ſaid ſhip was, by and through the mere dangers of the ſeas, and the force and violence of the winds and waves, and by means of ſtormy and tempeſtuous weather, totally ſunk and loſt with the goods and merchandizes on board her; and the ſaid H. Jarvis thereby wholly loſt and was deprived of his commiſſions, privileges, and wages in, for, and on account of the ſaid ſhip, and the ſaid goods and merchandizes on board her as aforeſaid, and of the profits thereof; of all which ſaid premiſes the ſaid George Warren afterwards, to wit, on the ſame day and year laſt aforeſaid, at Mancheſter aforeſaid in the county aforeſaid, had notice, and was then and there requeſted by the ſaid Henry to pay him the ſaid ſum of one hundred and fifty pounds ſo by him inſured as aforeſaid; and which one hundred and fifty pounds he the ſaid George Warren ought to have paid, according to the form and effect of the ſaid policy and his ſaid promiſe in that behalf made as aforeſaid.

2d Count. That ſhip was loſt not through any inſufficiency known to the aſſured; and promiſe to pay loſs on commiſſions, &c. within one month.

And whereas alſo the ſaid Henry Jarvis, &c. (as in the *laſt Count*, *ſaying*, *a certain other policy and laſt mentioned writing*), to wit, on the ſaid tenth day of May in the year aforeſaid, the ſaid laſt mentioned ſhip was, by and through the mere dangers of the ſeas, and the force and violence of the winds and waves, and by means of ſtormy and tempeſtuous weather, and not through any inſufficiency of the ſhip known to the ſaid H. J. at the time of making the ſaid laſt mentioned inſurance, totally ſunk and loſt, with the ſaid laſt mentioned goods and merchandizes on board her, and the ſaid H. J. thereby wholly loſt and was deprived of his commiſſions, privileges, and wages in, for, and on account of the ſaid laſt mentioned ſhip, and of the goods and merchandizes ſo aboard her as laſt aforeſaid, and of the profits thereof; of all which ſaid laſt mentioned premiſes the ſaid George afterwards, to wit, on the *twelfth day of March* 1774, at Mancheſter aforeſaid in the ſaid county, alſo had notice; and he the ſaid George Warren thereupon, in conſideration of the premiſes laſt aforeſaid, afterwards, to

wit,

wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and to the said H. J. then and there faithfully promised to pay him the sum of fifty-three pounds twelve shillings and three pence per cent. loss on commissions, privileges, and wages, for and on account of the premises last aforesaid, in one month from that time: and the said H. J. in fact says, that the sum of fifty-three pounds twelve shillings and three pence per cent. on the said one hundred and fifty pounds so insured as last aforesaid, amounts in the whole to a large sum of money, to wit, to the sum of eighty pounds eight shillings and four pence halfpenny; whereof the said G. W. afterwards, to wit, on the same day and year last aforesaid, at Manchester aforesaid in the county aforesaid, had notice. And whereas also, &c. (another Count, two hundred pounds, money had and received; two hundred pounds money paid, laid out, and expended: common conclusion; damages three hundred pounds.

F. BULLER.

Against an underwriter of a policy on goods to the amount of 132l. from Alicant to Havre de Grace, where the ship was not lost, but the goods damaged by the ship having sprung a leak.

LONDON, to wit. Plaintiff complains against defendant, being, &c. for that whereas, on the twenty-first day of December 1771, at London aforesaid, &c. he the said plaintiff made a certain writing, commonly called a policy of insurance, according to the usage and custom of merchants, purporting thereby, and containing therein, that, &c.; and by the said writing or policy of insurance, corn, fish, salt, fruit, flour, and seed, were warranted free from average, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins, were warranted free from average under five pounds per cent. and all other goods free from average under three pounds per cent. unless general, or the ship were stranded; and it was particularly agreed, that any insufficiency of the ship, not known to the assured, should not prejudice that insurance, as by the said writing, &c. relation being thereunto had, may more fully appear. And whereas afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in consideration of one pound nineteen shillings and seven pence of lawful money, &c. to him the said defendant then and there paid by the said plaintiff, at the special instance and request of the said defendant, for the assurance of one hundred and thirty-two pounds upon the following goods, that is to say, twenty-five serons barilla of No. 1. to 25, on board the said ship or vessel for and upon the said voyage in the said policy mentioned, according to the tenor and effect, and the true intent and meaning of the said writing or, &c. he the said defendant became an assurer for the said sum of one hundred and thirty-two pounds upon the said twenty-five serons barilla for and upon the said voyage, according to the true intent and meaning of the said writing or, &c. as such assurer; and to the said plaintiff then and there faithfully promised, that he the said defendant would well and truly perform all and singular the said premises in the said writing or, &c. contained on the part and behalf of the assurers to be performed and

fulfilled,

fulfilled as to the ſaid twenty-five ſerons barilla, according to the tenor and true intent and meaning of the ſaid writing or, &c. ſo far as the ſaid one hundred and thirty-two pounds by him the ſaid defendant aſſured and ſubſcribed as aforeſaid: and the ſaid plaintiff in fact ſays, that the ſaid ſhip, at the time of the making of the ſaid writing or, &c. was in ſafety at Alicant aforeſaid, that is to ſay, at L. aforeſaid, in the pariſh and ward aforeſaid, and that the ſaid twenty-five ſerons barilla were the proper goods of the ſaid plaintiff, and were of great value, to wit, of the value of three hundred pounds of lawful, &c.: and that the ſaid ſhip, with the ſaid twenty five ſerons barilla on board thereof, afterwards, to wit, on the ſaid twenty-firſt day of December in the ſaid 1771, ſet ſail and departed from Alicant aforeſaid on her ſaid voyage; and that, as the ſaid ſhip was ſailing and proceeding on her ſaid voyage with the ſaid goods on board thereof, the ſaid goods, before the arrival of the ſaid ſhip or goods at Havre de Grace aforeſaid, to wit, on the firſt day of January A. D. 1772, by ſtorms and tempeſts, and the violence and perils of the ſeas, were wholly loſt, that is to ſay, at London aforeſaid, at the pariſh and ward aforeſaid; of all which ſaid premiſes the ſaid defendant afterwards, to wit, on the ſame day and year laſt aforeſaid, at, &c. aforeſaid, had notice; and was then and there requeſted by the ſaid plaintiff to pay to him the ſum of one hundred and thirty-two pounds ſo as aforeſaid inſured; which ſaid ſum of one hundred and thirty-two pounds he the ſaid defendant, according to the form and effect of the ſaid writing or, &c. and of his promiſe and undertaking ſo made as aforeſaid, then and there ought to have paid to the ſaid plaintiff. And whereas alſo (two hundred pounds money had and received; two hundred pounds money laid out and expended; damages two hundred pounds.) F. BULLER.

Declaration on a policy of aſſurance on captain's commiſſions to ariſe from the ſale of ſlaves.

LONDON, to wit. William Boys complains of Charles Kenſington, being in the cuſtody of the marſhal of the marſhalſea of our ſovereign lord the now king, before the king himſelf; for that whereas the ſaid William heretofore, to wit, on the twenty-ninth day of Auguſt in the year of Our Lord 1794, at London, in the pariſh of St. Mary le Bow in the ward of Cheap, according to the uſage and cuſtom of merchants, cauſed to be made a certain writing or policy of aſſurance, purporting thereby, and containing therein (amongſt other things), that John Owen Parr (by the name and deſcription of Mr. John Owen Parr agent, he the ſaid John Owen Parr being the agent immediately employed to effect ſuch policy), as well in his own name as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might, or ſhould appertain in part or in all, did make aſſurance, &c. (here ſet out the policy); of which ſaid writing or policy of aſſurance the ſaid Charles afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice; and thereupon afterwards, to

to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said William, at the special instance and request of the said Charles, had then and there paid, and caused to be paid, to the said Charles, twelve guineas, that is to say, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium and reward for the insurance of one hundred pounds of and upon the captain's commissions in the said writing or policy of assurance mentioned, and had then and there undertaken, and to the said Charles faithfully promised, to perform and fulfil all things in the said writing or policy of assurance contained on the part and behalf of the assured to be performed and fulfilled, he the said Charles undertook, and to the said William then and there faithfully promised, that he the said Charles would become an assurer to the said William in the said sum of one hundred pounds of and upon the captain's commissions in the said writing or policy of assurance mentioned; and that he the said Charles would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf as such assurer to be performed and fulfilled, according to the form and effect of the said writing or policy of assurance; and the said Charles then and there became an assurer to the said William in the said sum of one hundred pounds in and upon the said commissions in the said writing or policy of assurance mentioned, and then and there subscribed the said writing or policy of assurance as such assurer for the said sum of one hundred pounds accordingly, to wit, at London aforesaid, in the parish and ward aforesaid: and the said William in fact says, that the said ship or vessel, in the said writing or policy of assurance mentioned, at the time of the making of the said writing or policy of assurance, to wit, on the same day and year aforesaid, was in good safety at Liverpool, in the said writing or policy of assurance mentioned, and that a cargo of divers goods and merchandizes were then and there loaded and put on board of the said ship or vessel, to be carried therein on the voyage in the said policy of assurance mentioned; and that he the said William, as captain of the said ship or vessel, was interested in the captain's commissions in the said writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by him ever insured thereon; and that the said insurance so made as aforesaid was made to and for the use and benefit, and on the account of him the said William, to wit, at London aforesaid, in the parish and ward aforesaid: and the said William further says, that the said ship or vessel, with the said cargo on board thereof as aforesaid, afterwards, to wit, on the same day and year aforesaid, did depart and set sail from Liverpool aforesaid, upon her said voyage, to and for the coast of Africa in the said writing or policy of assurance mentioned; and that, after the sailing and departing of the said ship or vessel as aforesaid, and whilst she was sailing and proceeding in the course of her said voyage in the said writing or policy of assurance mentioned, and before her arrival at the coast of Africa,

Mutual promises.

Africa, to wit, on the tenth day of September in the year aforesaid, the said ship or vessel, with the said cargo, was, by and through the force and violence of the winds and waves, and the mere perils and dangers of the seas, broken, bulged, damaged, wrecked, sunk in the sea and totally lost, whereby the said commissions, in the said writing or policy of assurance mentioned, belonging to the said William as captain of the said ship or vessel, became and were wholly lost to the said William, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises the said Charles afterwards, to wit, on the same day and year last aforesaid, there had notice; by reason whereof the said Charles became and was liable to pay, and was then and there requested to pay to the said William the sum of one hundred pounds so by him insured as aforesaid; and which said sum of money the said Charles then and there ought to have paid to the said William, according to the meaning and effect of the said writing or policy of assurance, and of his said promise and undertaking so made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money had and received, laid out and expended, lent and advanced): Yet the said Charles, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not yet paid to the said William the said several sums of money, or any or either of them, or any part of them (although often requested so to do); but to pay the said several sums of money, or any or either of them, or any part of them, to the said William, he the said Charles hath hitherto wholly refused, and still doth refuse, to the damage of the said William of one hundred pounds; and therefore he brings suit, &c.

I Am of opinion, that, in this case, the plaintiff has not much chance of recovering. There can be little doubt, that an insurance upon captain's commissions is a good insurable interest: but, in order to recover upon such a policy, it is absolutely necessary to prove that the subject-matter, from which that commission is to arise, was on board the ship at the time of the loss. It is admitted that the commissions intended to be insured were to arise from the sale of the slaves; and as those slaves were not and could not be on board at the time of the loss, I am of opinion the plaintiff cannot recover; but he will be entitled to a return of premium.

A. PARK.

Assumpsit in B. R. on a policy of insurance on goods on board a ship, with a special warranty that the goods were safe till such an hour on such a day. The policy set

LONDON, to wit. Raphael Brandon complains against William Halhed, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself; for that whereas the said Raphael, on the twenty first day of February in the year of Our Lord 1770, at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, according to the usage and custom of merchants, caused to be made a certain policy of insurance, purporting thereby, and containing therein, that the said Raphael, by the name of Mr. Raphael Brandon,

don, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused himself and them and every of them to be insured, lost or not lost, at and from Newcastle to Bayonne in France, upon any kind of goods whatsoever then loaden or to be loaden on board the good ship or vessel called The Speedwell, whereof was master under God for that voyage John Cowley, or whoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at Newcastle, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at Bayonne aforesaid, and the same be there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by agreement were and should be valued at l.: touching the adventures and perils which they the said assurers were contented to bear and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrests, restraints, and detriments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune, it should be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the insurers, that the said writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance theretofore made in Lombard street, or in the Royal Exchange, or elsewhere in London; and so they the insurers were contented, and did thereby promise and bind themselves, each one for his own, his heirs, executors, and goods, to the assureds, their executors, administrators, and assigns, for the true performance of the premises; confessing themselves paid the consideration due to them for that insurance by the insured, at and after the rate of two pounds per cent; in witness whereof they the said assurers did subscribe their names and sums assured in London. *And* by the said writing or policy of insurance, corn, fish, salt, fruit, flour and seed were warranted free from average under three pounds per cent, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins, were warranted free from average under

Warranty free from average, unless, &c.

under five pounds per cent. and all other goods free from average under three pounds per cent. unless general, or the ship were stranded. *And* it was by the said writing or policy of insurance declared, that the goods insured thereafter were warranted free from all damage till the nineteenth day of February 1770, at twelve o'clock at night on Monday; *of* which said writing or policy of insurance the said William afterwards, to wit, on the said twenty-first day of February in the said year of Our Lord 1770, at London aforesaid, in the parish and ward aforesaid, had notice. *And* thereupon afterwards, to wit, on the same day and year aforesaid, at the parish and ward aforesaid, in consideration that the said Raphael had then and there paid to the said William the sum of two pounds, as a premium or reward for the insurance of one hundred pounds of and upon the premises in the said writing or policy of insurance, and had then and there undertaken and faithfully promised the said William to perform and fulfil all things in the said writing or policy of insurance contained, on the part and behalf of the assured to be performed and fulfilled as to the said goods and merchandizes, he the said William undertook, and to the said Raphael then and there faithfully promised, that he the said William would become an assurer to the said Raphael for the sum of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance, and would perform all things in the said writing or policy of insurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said one hundred pounds; and the said William then and there became and was an assurer to the said Raphael, and then and there subscribed the said writing or policy of insurance as such insurer as to the said one hundred pounds. *And* the said Raphael avers, that the said Raphael at the time of making the said writing or policy of insurance, and continually from thence until and at the time of the loss hereinafter mentioned, was interested in the goods and merchandizes loaden on board the said ship to a large value and amount, to wit, to the value and amount of all the money insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid. *And* the said Raphael further says, that the said ship, after the said nineteenth day of February in the said year of Our Lord 1770, to wit, on the twentieth day of February in the year last aforesaid, upon the high-seas, by winds, storms, and tempests, became and was wrecked, foundered, sunk, and wholly lost in the said seas, and the said goods and merchandizes of the said Raphael were thereby then and there sunk in the seas and wholly lost, to wit, at London aforesaid, in the parish and ward aforesaid; *of* which said premises the said William afterwards, to wit, on the first day of March in the said year of Our Lord 1770, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there required by the said Raphael to pay him the said sum of one hundred pounds, and which he the said William, according to the form

Warranty that goods were safe till such a day.

Averment of interest in the plaintiff.

Ship wrecked.

Notice to defendant.

form and effect of the said writing or policy of insurance, and his said promise and undertaking in that behalf made as aforesaid, ought to have paid to him the said Raphael. *And* whereas the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Raphael in other one hundred pounds of lawful money of Great Britain, for so much money by the said Raphael before that time paid, laid out, and expended to and for the use of the said William, and at his special instance and request; and being so indebted, he the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said Raphael to pay him the said last mentioned sum of money, when he the said William should be thereunto afterwards requested. *And* whereas the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Raphael in other one hundred pounds of like lawful money, for so much money by the said William before that time had and received to and for the use of the said Raphael; and being so indebted, he the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Raphael then and there faithfully promised to pay him the said last mentioned sum of money, when he the said William should be thereunto afterwards requested: *nevertheless*, the said William not regarding his said several promises and undertakings so by him in form aforesaid made, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said Raphael in this behalf, hath not yet paid him the said several sums of money, or any of them, or any part thereof, (although often requested so to do) but to pay the same he the said William hath hitherto wholly refused, and still doth refuse, to the damage of the said Raphael of one hundred and twenty pounds; and therefore he brings suit, &c. Pledges, &c.

2d Count, Money paid.

3d Count, Money had and received.

Common conclusion.

THO. BARROW.

On LIVES.

LONDON, *ss.* James Allan, late of, &c. was attached to answer Martha Meredith in a plea, &c. for that whereas the said Martha heretofore, to wit, on, &c. at, &c. for her own use and benefit, had caused to be made a certain writing of assurance, commonly called a policy of assurance, purporting thereby, and containing therein, that in consideration of three guineas per cent. the receipt of which they thereby acknowledged, and according to that rate for every greater or lesser sum received of the said Martha, by the name of M. M. of Chester, they whose names were thereunto subscribed did for themselves severally, and for their several heirs, executors, administrators, and assigns, and not

Declaration, Plaintiff insured with defendant and others *the life of* one J. G. by which they bound themselves to pay 100l. if the said J. G. died before the expiration of the policy. J. G. died, [illegible] dant refused to

one for the other or others of them, or for the heirs, executors, adminiſtrators, and aſſigns of the other or others of them, aſſume, promiſe, and agree, that they reſpectively, or their reſpective heirs, adminiſtrators, and aſſigns, ſhould and would well and truly pay, or cauſe to be paid, without any diſpute, abatement, or contention whatever, unto the ſaid Martha, her heirs, executors, adminiſtrators, and aſſigns, by her own indorſement thereon, the full ſum and ſums of money which they had thereunto reſpectively ſubſcribed, on the following conditions, that is to ſay, in caſe J. G. eſquire of Knowle Cottage, near Wimborn in Dorſetſhire, warranted in good health, ſhould die or deceaſe out of his natural life by any ways or means whatſoever, (ſuicide and the hand of juſtice only excepted,) at any time between the twenty-ninth day of December 1785 and the twenty-ninth day of December 1786, both days included, and during the lifetime of the ſaid Martha; but in caſe the ſaid Martha ſhould depart this life before the above-named J. G. that policy or obligation to be null and void, otherwiſe to be and remain in full force until the twenty-ninth day of December 1786, valued at the ſum inſured, as by the ſaid writing of inſurance, reference being thereto had, will fully appear; of which ſaid writing of aſſurance the ſaid James afterwards, to wit, on the ſaid twenty-ninth day of December 1785, at, &c. had notice: and thereupon afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid Martha, at the ſpecial inſtance and requeſt of the ſaid James, had then and there paid to the ſaid James the ſum of three guineas of lawful money of Great Britain, as a premium for the aſſurance of one hundred pounds of and upon the premiſes mentioned in the ſaid writing of aſſurance, and had undertaken, and then and there faithfully promiſed the ſaid James to perform all things contained in the ſaid writing of aſſurance on her part and behalf to be performed and fulfilled as ſuch aſſured, he the ſaid James undertook, &c. the ſaid Martha, that he the ſaid James would become an aſſurer to the ſaid Martha for the ſaid ſum of one hundred pounds of and upon the premiſes mentioned in the ſaid writing of aſſurance, and that he would perform and fulfil all things contained in the ſaid writing of aſſurance, to be performed and fulfilled on his part and behalf as ſuch aſſurer for the ſaid ſum of one hundred pounds, and then and there ſubſcribed his name to the ſaid writing of aſſurance as ſuch aſſurer for the ſaid one hundred pounds: and the ſaid Martha in fact ſaith, that the ſaid J. G. mentioned in the ſaid writing of aſſurance, at the time the riſk in the ſaid policy contained commenced, to wit, on, &c. incluſive, was in good health, to wit, at Knowle Cottage, in the ſaid writing of aſſurance mentioned, that is to ſay, at, &c.: and the ſaid Martha further ſaith, that the ſaid J. G. after the ſaid twenty-ninth day of December 1785, and before the thirtieth day of December 1786, and before the day of ſuing forth the original writ of the ſaid Martha, to wit, on, &c. at, &c. did die and deceaſe out of his natural life, to wit, by a natural death, and not by ſuicide, or the hand of juſtice; of all which premiſes the ſaid James

James afterwards, to wit, on, &c. at, &c. had notice: and the said Martha avers, that she the said Martha, at the time of making the said writing of assurance, and also at the time of her becoming such assured thereby as aforesaid, *was interested in the life* and event so thereby insured against as aforesaid, to a large amount, to wit, to the amount of all the money by her insured thereon, to wit, at, &c.; whereby, and by reason of which said several premises, and according to the tenor of his promise and undertaking aforesaid, he the said James then and there became liable to pay, and ought to have paid to the said M. the said sum of one hundred pounds so by him assured as aforesaid. And whereas, &c. &c. (Money had and received; account stated; common conclusion.)

V. LAWES.

Declaration at the suit of assignees of a *bankrupt*, on a policy of assurance on a *life*, with averment of interest.

LONDON, to wit. R. C. S. H. and J. M. assignees of the estate and effects of S. D. a bankrupt, according to the form and effect of the statutes made and now in force concerning bankrupts, complain of R. B. esquire, being, &c. for that whereas the said S. D. before he became a bankrupt, to wit, on, &c. caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that in consideration of two guineas per cent. and according to that rate for every greater and lesser sum received of the said S. D. they whose names were thereunto subscribed did for themselves severally, and for their several heirs, executors, administrators, and assigns, assure, promise, and agree, that they, their heirs, executors, administrators, and assigns, should and would well and truly pay, and cause to be paid, without any dispute, abatement, or contention whatsoever, unto the said S. D. his heirs, executors, administrators, and assigns, by his or their indorsement thereon, the full sum and sums of money which they had thereunto subscribed, on the following conditions; in case R. C. esquire, of Northumberland-street, Strand, should die or cease this life by any ways or means whatsoever, (suicide or the hand of justice excepted,) before the death or decease of the said S. D. at any time between the fifth of May 1776 and fifth of January 1777; and the said R. C. esquire was thereby warranted in good health the fifth of May 1776, as by the said writing or policy of assurance fully appears; of which said writing or policy of assurance the said defendant afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said S. D. before he became a bankrupt, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of four guineas, as a premium or reward for the assurance of two hundred pounds of and upon the premises in the said writing or policy of assurance mentioned, and had undertaken and faithfully promised the said defendant all things in the said writing or policy of assurance contained on the part and behalf of the assured to be performed and fulfilled, he the said defendant undertook, and

 then

then and there faithfully promised the said S. D. that he the said defendant would become an assurer to the said S. D. for the said sum of two hundred pounds of and upon the premises in the said writing or policy of assurance mentioned, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance as such assurer for the said sum of two hundred pounds: and the said plaintiffs, as assignees in form aforesaid, further say, that he the said S. D. at the time of the making of the said writing or policy of assurance, and from thence until the time of the event hereinafter mentioned, was interested in the said premises and event, in the said writing or policy of assurance mentioned, to a large amount, to wit, to the value of all the monies by him ever assured thereon; and that the said assurance, so made as aforesaid, was made for the said S. D. in his own name and for his use and benefit, to wit, at, &c.: and the said plaintiffs, as assignees in form aforesaid, further say, that the said R. C. was in good health on, &c. to wit, at, &c.: and the said plaintiffs, as assignees in form aforesaid, further say, that the said R. C. in the said writing or policy of assurance mentioned, after the making of the said writing or policy of assurance, and before the bankruptcy of the said S. D. and before the day of exhibiting the bill of the said plaintiffs, as assignees in form aforesaid, and before the fifth of January 1777, to wit, on, &c. at, &c. departed this life, and then and there died a natural death, and not by suicide or the hands of justice, the said S. D, then and still being living, to wit, at, &c.; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice, and was then and there requested by the said S. D. before he became a bankrupt, to pay unto him the said two hundred pounds so assured as aforesaid, and which said two hundred pounds the said defendant ought to have paid to the said S. D. before he became a bankrupt, according to the form and effect of the said writing or policy of assurance, and his said promise and undertaking so made as aforesaid. (2d Count like the first, only stating if R. C. should die before S. D. any time before the fifth of January 1777. 3d Count, in consideration of premium, and that S. D. had warranted R. C. in good health on the fifth of May 1776, undertook, &c. in case R. C. should die before S. D. any time between the fifth of May 1776 and fifth of January 1777. 4th Count, of premium, and S. D. had warranted R. C. in good health on the fifth of May 1776, undertook, &c. if R. C. should die before S. D. and before the fifth of January 1777.)

Declaration on a policy of assurance of a life, in case an officer should die between 25th March 1769 and 25th March 1776 inclusive, and a further premium of three per cent. if war should be declared.

LONDON, to wit. J. G. late of London, merchant, was attached to answer T. L. B. esquire, in a plea of trespass on the case. And thereupon the said T. by A. B. his attorney, complains,

plains, for that whereas the said T. on the third day of April 1769, at London aforesaid, to wit, at, &c. had caused to be made a certain writing or policy of assurance, containing therein, that in consideration of twenty-one pounds per cent. and according to that rate for every greater or less sum received by the said T. they whose names were thereunto subscribed did for themselves severally, and their several heirs, executors, administrators, or assigns, and not one for the other or others of them, or for the heirs, &c. of the other of them, engage and promise that they respectively, or their respective heirs, &c. should and would pay, or cause to be paid, to the said T. his executors, &c. the sum and sums of money which they had thereunto respectively subscribed, without any deduction of, or in any respect, cause, matter, or thing whatsoever, in case colonel E. W. should die or cease this life by any ways or means whatsoever, (suicide or the hands of justice excepted,) at any time before the end and determination of seven years, commencing the twenty-fifth of March 1769, and ending the twenty-fifth of March 1776, both days inclusive, provided the said Thomas should be living at the time of such decease, otherwise that assurance should be null and void, as by the said writing or policy of assurance fully appears; and it was then and there agreed, that in case war should be declared, and the said colonel E. W. should go abroad on military duty, that the underwriters should receive afterwards a premium of three per cent. as by the said writing or policy of assurance more fully appears; of which said writing or policy of assurance the said J. G. afterwards, to wit, on the said third of April 1769, at London aforesaid, &c. had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in consideration that the said Thomas, at the special instance and request of the said Johnson, had then and there paid to the said Johnson the sum of forty-two pounds as a premium and reward for the assurance of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and had undertaken and faithfully promised the said Johnson, to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said Johnson undertook, and to the said Thomas then and there faithfully promised, that he the said Johnson would become an assurer to the said Thomas for the said sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and that he the said Johnson would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance for the said two hundred pounds: and the said T. further says, that war was not declared, and that the said Edward W. in the said writing or policy of assurance mentioned, did not go abroad on military duty at any time after the making of the said writing or policy of assurance: and the said T. further says, that

the said E. W. in the said writing or policy of assurance mentioned, after the making of the said writing or policy of assurance, and before the day of suing out the original writ of the said T. to wit, on the first of May 1771, at London aforesaid, in the parish and ward aforesaid, departed this life, and then and there died a natural death, and not by suicide or the hands of justice; of all which said premises the said J. afterwards, to wit, on the same day and year last aforesaid, at, &c. had notice; and was then and there requested by the said T. to pay to him the sum of two hundred pounds so insured by the said J. as aforesaid; and which said sum of two hundred pounds he the said J. then and there ought to have paid to the said T. according to the form and effect of the said writing or policy of assurance, and of his said promise and undertaking so made as aforesaid. *And whereas* also afterwards, to wit, on the said third of April 1769, at London aforesaid, in the parish and ward aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there paid to the said defendant another sum of forty-two pounds, and had undertaken and faithfully promised to pay to him the further sum of three pounds per cent. in case war should be declared, and the said Edward should go abroad on military duty, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay to him another sum of two hundred pounds, in case the said Edward should die or cease this life by any means or ways whatsoever, (suicide or the hands of justice excepted,) at any time before the end and determination of seven years, commencing the twenty-fifth of March 1769, and ending the twenty-fifth of March 1776, both days included, provided the said Thomas should be living at the time of such decease: and the said plaintiff further says, that the said Edward, after the making of the said last-mentioned promise and undertaking of the said defendant, and before the day of suing out the original writ of the said plaintiff, to wit, on, &c. at, &c. died a natural death, not by suicide or the hands of justice; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. then and there had notice, and was then and there requested by the said plaintiff to pay to him the further sum of two hundred pounds so insured by the said defendant as last aforesaid, and which said last-mentioned sum of two hundred pounds he the said defendant ought to have paid to the said plaintiff, according to the form and effect of his said promise and undertaking so made as aforesaid. *And whereas*, &c. (Money had and received; and breach to the whole.)

(Margin note: 2d Count, in consideration that plaintiff had paid 42l. to defendant, and promised to pay 3 per cent. in case war should be declared, &c.)

in covenant

AGAINST FIRE.

(Margin note: Declaration at suit of bankrupt's assignees against the subscribing directors of the Sun Fire-office, for a loss sustained by the bankrupt.)

LONDON, ss. Samuel Oldham and William Cooper, assignees of the estate, &c. of William Ingram, a bankrupt, against Calverly Bewick, James Haughton Langston, and William Godfrey,

frey, esquires; for that whereas by a certain deed poll, or policy of assurance, made by the said Calverly, James H. and W. G. on, &c. in, &c. (which said deed, sealed with the respective seals of the said Calverly, &c. bearing date the same day and year aforesaid, they the said Samuel and William Cooper now bring into court here) reciting that the said William Ingram, by the name and addition of William Ingram, of, &c. linen and woollen-draper, hosier and haberdasher, having paid the sum of two pounds eleven shillings to the Society of the Sun Fire-office, in London, and having agreed to pay, or cause to be paid to them, at their said office, the sum of one pound seventeen shillings and sixpence, on, &c. and the like sum of one pound seventeen shillings and sixpence yearly and every year during the continuance of the said policy for insurance from loss or damage by fire on his houshold goods, in his then dwelling house only, situate at, &c. brick and tile, not exceeding seventy pounds, and on his utensils and stock therein only, not exceeding one thousand four hundred and thirty pounds, they the said Calverly, &c. did covenant, that from the date of the said policy, and so long as the said William Ingram should duly pay, or cause to be paid, the said sum of one pound seventeen shillings and sixpence, at the times and places aforesaid, and the trustees or acting members of the said Society for the time being should agree to accept the same, the stock and fund of the said Society should be subject and liable to pay to the said William Ingram, his executors, administrators, and assigns, all such his damages and loss which he the said William Ingram should suffer by fire, not exceeding the sum of one thousand five hundred pounds, according to the exact tenor of their printed Proposals, dated on, &c. And the said Samuel and William Cooper further say, that the printed Proposals in and by the said deed mentioned and alluded to, are as follows, that is to say, January 6, 1766, Proposals, &c. &c. (the whole of the printed Proposals were here set forth, expressing the amount of the Society's stock, rates of insurances, &c. but the only passages applicable to the action are) Article sixth, To prevent frauds, &c. &c. Article seventh, No loss, &c. &c. Article tenth, Persons insured, &c. &c. as by the said deed and Proposals, relation being thereto had, more fully appears. And the said Samuel and William Cooper, assignees as aforesaid, aver, that the said William Ingram at the time of the making of the said policy of assurance, and from thence until the loss and damage hereafter-mentioned, was interested in the said insured premises to a large amount, to wit, to the amount of all the money by him insured, or caused to be insured thereon, to wit, at, &c. and that houshold goods, utensils, and stock to the said amount, continued and remained in the said house until afterwards, to wit, on, &c. the same were burnt, consumed, and destroyed by fire, which did not happen by any invasion, foreign enemy, civil commotion, or any military or usurped power whatsoever; whereby the said William Ingram sustained damage to a large amount, to wit, to the amount of the money by him thereon

 assured,

assured, to wit, at, &c. And the said Samuel and William Cooper further say, that the said premises in the said deed or policy mentioned, at the time of the making of the said deed, were not, nor at any time since have been insured in any other office; and that the same premises in the said deed or policy mentioned, were insured at a lower premium than proposed in the table in the said Proposals mentioned. And the said Samuel and William Cooper further say, that the said William Ingram did forthwith after the said loss, to wit, on, &c. at, &c. give notice thereof to the said Society, at their said office, and also as soon as possible afterwards, to wit, on, &c. did there deliver in as particular an account of his said loss and damage as the nature of the case would admit of; and did then and there make proof of the same by his oath and affidavit in writing, according to the form practised in the said office, and by such other proper vouchers as were reasonably required. And the said Samuel and William Cooper further say, that the minister of the parish of, &c. in which the aforesaid dwelling-house of the said William Ingram was situate, long before, and at the time of the loss herein before mentioned, dwelt and resided at a distance from and out of the said parish, and was and still is wholly unacquainted with the character and circumstances of the said W. Ingram, and wholly unable to make such certificate as by the said policy is required; but that the said William Ingram afterwards, to wit, on, &c. at, &c. did procure, and did deliver at the said office, a certificate under the hands of William Thomas Lecoq, &c. &c. then, and at the time of the said loss, being reputable inhabitants of the said parish, who were not concerned in the said loss, importing, that they knew the said W. I. late of, &c. linen-draper, and did believe that he by misfortune, and without fraud, did, on, &c. sustain a considerable loss and damage, by his dwelling-house and the stock and effects thereon, or great part thereof, being consumed by fire; of all which said premises the said Calverly, &c. afterwards, to wit, on, &c. had notice from the said William Ingram. And the said Samuel and William Cooper further say, that the said William, before he became a bankrupt, and the said Samuel and William Cooper, assignees as aforesaid, since the time of the said W. I. became a bankrupt, have always been ready and willing to submit all matters in difference between him and them respectively and the said office touching the said loss to the arbitration of arbitrators, indifferently to be chosen between them. And the said Samuel and William Cooper further say, that although the said W. I. before he became a bankrupt, and the said Samuel and William Cooper, assignees as aforesaid, since the said W. I. became a bankrupt, have respectively in all things conformed himself and themselves to and concerning all and singular the stipulations, matters, or things, which on his or their parts were to be observed and performed to the utmost of their power, according to the form and effect of the said deed or policy of insurance, and of the said Proposals; and although the stock or fund of the said Society

Society always hath been and yet is sufficient to pay the said loss sustained by the said W. I. by reason of the said fire, yet the said W. I. before he became a bankrupt, was not, nor have the said Samuel and William Cooper, assignees as aforesaid, at any time since the said W. I. became a bankrupt, hitherto out of the stock and fund of the said Society, or in any other manner, been repaid or reimbursed the said loss, or any part thereof, but the same and every part thereof is still wholly in arrear and unpaid, contrary to the form and effect of the said Calverly, &c. by them in that behalf made as aforesaid; and so the said Samuel and William Cooper, assignees as aforesaid, say, that the said Calverly, &c. (although often requested) have not kept with the said W. I. before he became a bankrupt, nor with the said Samuel and William Cooper, assignees as aforesaid, since the said W. I. became a bankrupt, the covenant made between the said W. I. before he became a bankrupt, and the said Calverly, &c. in that behalf as aforesaid; but the said Calverly, &c. have broken the same, and still refuse to keep the same with the said Samuel and William Cooper, assignees as aforesaid, to the damage, &c. &c.

First, *Non est factum.* Second, *Actio non,* Because they say, that the said houshold goods, utensils, stock, and goods in pledge, besides plate, jewels, and wearing apparel, china and glass, in the said declaration mentioned, and by the said plaintiffs above supposed to have been burnt, consumed, and destroyed by fire in the said dwelling-house, were not, nor any part thereof burnt, consumed, or destroyed by fire in the said dwelling-house, in manner and form as the said plaintiffs have in their said declaration above alledged. And of this they put themselves upon the country, &c. Thirdly, *Actio non,* Because they say, that the said dwelling-house at the said time, when, &c. in the said declaration mentioned, was fraudulently set on fire by the said plaintiffs, with intent to defraud them the said defendants. And this they are ready to verify. Wherefore, &c. if, &c. F. BULLER. Plea.

This declaration is in covenant, yet I have given it here as if policies of assurance was a distinct head not classed under Assumpsit; but the student will find it under its proper head, COVENANT, in the INDEX.

END OF THE FIRST VOLUME.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

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take

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49.	Plea in *trespass* to the jurisdiction of B. R. that the cause of action arose in the *great sessions of Wales*.	
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That lands are held in *ancient demesne*; replication, that they are held in fee at common law, *Br. Red.* 504. 3. *Inst. Cl.* 9. 2. *Mod. Ent.* 2. and held of a manor in right of the church, *Ra. Entr.* 101. *Vet. Intr* 91. *Finch*, 65.

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That the land is held of the king as of his manor of B. which is *ancient demesne*; replication, that it is held of a corporation impleadable at common law, 1. *Bro.* 1.

That the place, and all other the lands in the manor, are held of the king, and impleadable in the *manor court*, and not elsewhere; replication, that the place is pleadable at common law, *Thomp.* 2. 3. *Inst. Cl.* 8. *Hans.* 103.

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as without the county, are held of earls of Chester, and are impleadable before justices there, and not elsewhere; demurrer, *Rob. Entr.* 1. *Instr. Cl.* 14. *Bro. V. M.* 473. *Ra. Entr.* 419. *Vet. Intr.* 33.

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5, 6. Plea to the jurisdiction of the court of C. B. of privilege by a sworn clerk in the lord treasurer's remembrancer's office in the exchequer, sued here. and Opinions; with judgment of *quod cassetur billa* for the defendant.

16. Plea in abatement that the bill is filed against defendant as a common person, and not as *clerk to the chief clerk*.

Plea

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29. Plea of privilege of an *attorney*, a *partner* with another attorney, one of B. R. the other C. B. (*See* Partner Defendant, *post*:).

33. Plea of privilege by an *attorney* sued by *assignees of a bail-bond* given by him, and proceeded against as a common person; and Opinion.

39. Plea to the jurisdiction of privilege by an *attorney* of C. B. to an action brought against him in B. R.

Replication to a plea similar to the last, that the plaintiff is an attorney of B. R. and as such impleaded the defendant in B. R. by attachment of privilege.

41. Plea of privilege by an *attorney* of B. R. pleaded to an action brought against him in that court as a common person; with Notes.

47. Plea, that defendant is an *attorney* of B. R. and ought not to be declared against in the custody of the marshal.

48. Plea by *attorney* sued in B. R. that he is an attorney of C. B.

53. 64. Plea by an *attorney* of C. B. that he is impleaded by *original* writ, and not by *bill* (*See* Plea to the Writ, *post.*).

That defendant is a filazer of B. R. and suable by bill only, *Lill. Ent.* 6. - - - - - 2. R. P. B. R. 12

———— ———— an attorney of C. B. *Lill. Ent.* 3. *Ib.* 16

That defendant is a prothonotary's clerk, and suable by bill only, and not by writ, - - - - - 2. R. P. C. B. 5

That defendant is an *attorney* of C. B. to an action in B. R. *Lill. Ent.* 9. - - - - - - - *Ib.* 9

Defendant pleads his privilege of a sixty clerk in chancery; plaintiff replies, that the defendant was discharged out of prison under the Insolvent Debtors Act, and his office assigned to the clerk of the peace for the benefit of the creditors: upon demurrer, judgment for the plaintiff: first, the defendant has concluded himself to say he has not assigned his office, because it appears by the replication that he has; secondly, defendant ought to have alledged that he is actually attendant on his office. 1. *Wils. Rep.* 228

Plea, that a serjeant at law ought to be sued by original, and not by bill; general demurrer and joinder, - *Pl. Ass.* 306

Plea in abatement to the writ, and declaration in an attachment of privilege for a prothonotary of C. B. - 1. *Ld. Raym.* 280

That the defendant is an attorney of C. B. 1. *Mod. Ent.* 2.

A plea of privilege that the defendant is a filazer of B. R. 1. *Mod. Ent.* 4.

Plea to the jurisdiction of the court, that the defendant is an attorney of C. B. 1. *Mod. Ent.* 11. *Lilly*, 9.

For a messenger of the exchequer by his privilege, 1. *Mod. Ent.* 21. Plea in abatement by privilege of the exchequer, 1. *Mod. Ent.* 23. *Lut.* 44.

That defendant is a *baron of the cinque ports*, where, and not elsewhere, he ought to be impleaded, by letters patent Edw. I. and confirmed by Eliz.; demurrer, *Rob. Entr.* 199. *Cl. Ass.* 10.

That defendant is one of the officers of the Mint of our lord the king, and that Ed. II. by letters patent granted that the officers and ministers of the Mint should be impleaded before the warden of the Mint, and not elsewhere, *Thomp.* 3.

That defendant is a tally-cutter and receiver in the exchequer, *Ibid.*

Plea by deputy serjeant at arms of the treasury of the exchequer impleaded in the B. R. *Ibid.* 4.

Clerk of the exchequer impleaded in B. R. after special imparlance; demurrer, *Thomp.* 118.

Debt *by attorney* of C. B. against the marshal for an escape; plea, that he ought not to be impleaded elsewhere than in B. R., demurrer, and judgment of *respondeas ouster*, 2. *Bro* 60. *Her.* 317.

Plea by one of the senior filazers of C. B. impleaded in B. R. *Thomp.* 4. By attorney of C B. 2. *Mo. Intr.* 7. By an attorney of C. B impleaded in B R.; replication, that defendant is *forejudged*, and removed from his office; rejoinder, *nul tiel record*, and issue, and *dies datus* to bring in the record, *Thomp.* 4. 3. *Inst. Cl.* 32. *Br. V M* 496.

That defendant is one of the filazers of C. B. 3. *Inst. Cl.* 32. 2. *Mo. Int.* 8.

By clerk in chancery impleaded in B. R. *Thomp* 5. 3 *Inst. Cl.* 30. *Br. V M.* 497. 500. Plea by servant of one of the six clerks in chancery impleaded in B. R. *Rob Entr.* 210.

By one of the chancellor's bedals of the university of Oxford; privilege granted to university by H. VIII. and confirmed by stat 13. Eliz.; and prays allowance of the said privilege; and plea in B. R. *Thomp.* 5. 9.

Defendant is serjeant at law, and ought to be sued by original, and not by bill, *Cl Ass.* 5. Demurrer and joinder, *Ra Ent.* 178. *Vet. Intr.* 128.

Privilege as servant of one of the lords of parliament pleaded, *Vid.* 93.

Privilege of exchequer pleaded after imparlance, *saving exceptions as well to the writ as to count*, is not good on demurrer; *otherwise saving all exceptions whatsoever*, 1. *Lut.* 44. *Vid.* 639. Privilege of an attorney of B. R.; judgment of *respondeas ouster*.

Debt on bond; plea of privilege as attorney of C. B; replication, that for five years before the original, defendant had not prosecuted or defended any suit, &c.; demurrer, and judgment for plaintiff, 1. *Lut.* 165.

Count by the king against a bishop for contempt, and withdrawing from parliament; defendant pleads, that he ought to be proceeded against in parliament only; demurrer, 4. *Inst.* 15.

Plea by *attorney* of C. B. impleaded in B. R. *Br.* 169. 172. By clerk of the prothonotary impleaded in an inferior court, *Br* 146.

That defendant is a servant of the archbishop, chancellor of England, and produces his writ; replication, that defendant is a summoner in court christian; and traverses that he is a domestic; and issue, *Ra. Entr.* 473. *Vet. Intr.* 62. Plea by servant of one of the clerks in chancery; demurrer; and judgment of *respondeas ouster*, *Ibid.* Plea by clerk in chancery disallowed after imparlance, *Ibid.* *Vet. Int.* 148. By a servant producing his writ out of chancery; replication, that he is not a servant, and issue, *Ra. Ent.* 473. *Br.* 161. 167. 268. Verdict for defendant, 168. Plea, that he is a servant to a clerk in chancery; writ thereupon pleaded, and imparlance; replication, that the defendant, on the day of the original purchased, was a notary public; and traverses, that he was a domestic, and issue, *Ra. Entr.* 472. *Br.* 163.

Case in trespass against I. who produces his writ, attesting, that he is the servant of the chief clerk of B. R; replication, that he is farmer of the lands of the chief clerk; demurrer, *Mode,* 82.

Plea by clerk of exchequer impleaded in C. B.; plaintiff does not gainsay, so privilege allowed, *Br.* 161. By auditor of the king's revenues; and demurrer, *Ib.* 171. By servant of chancellor of exchequer, and impleadable there, *Her.* 3. Servant of one of the auditors of the exchequer, and produces the writ; replication, not a servant; and issue; *cur. adv. vult* of the *venire facias*, *Ra Ent.* 473. *Vet. Intr.* 62. Servant of a lord of the treasury, and produces; replication, that the privilege belongs to the officers attending the accounts and business of the king, and their servants, that principal is treasurer, and defendant is his deputy in the post; demurrer, *Ra. Entr.* 473. *Vet. Intr.* 63.

II. To

II. To the Person of Plaintiff.

In Disability.

1. Abjured.
2. Alien. (*See* Plea by *Executors* that Testator was *Alien, post.*)
3. Attainted.
4. Bastard.
5. Convicted of
   1. Felony.
   2. Popish Recusancy.
   3. Not going to Church.
6. Excommunicated.
7. Monk.
8. Outlawed.
9. Waived.
10. Villein.

(3)

That plaintiff is *abjured*, to writ of privilege, *Clif.* 5.: and that writ of privilege is defective, *Ibid.* 8.

That demandant is a bastard, *Vet. Intr.* 88. 223.

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74, 75, 76. Plea in abatement to the person of plaintiff convicted of felony; replication thereto; *profert* of letters patent.

That plaintiff is attainted of felony; demurrer, *Co. Ent.* 246.

That plaintiff was indicted at the quarter sessions for *not going to church*, and proclamation according to the statute, and did not render himself, and so was *convicted*; replication, conviction was pardoned by special pardon; defendant maintains his bar; plaintiff demurs; and judgment of *respondeas ouster* awarded, 3. *Lev. Rep.* 5, 6.

An *outlawry* pleaded in abatement upon *exigent* only, without an original and other process, 1. *Mod. Ent.* 23. 5. *Mod.* 144. 2. *Show.* 443, 444.

Plea of *outlawry* of testator to *indebitatus assumpsit* for money received to the use of testator, 1. *Lut.* 1601.

In *scire facias*, outlawry pleaded, 1. *Lut.* 273.

Outlawry pleaded after special imparlance; and plaintiff replies, that he is not the same person; demurrer and joinder, *Clif.* 21. Demurrer, and *respondeas ouster* awarded, 1. *Lut.* 6. to make full defence *come semble.*

In dower, tenant pleads, that demandant is *waived*; replication, that he was commorant at another place, &c.; demurrer; and judgment for tenant, 1. *Lut.* 37.

Outlawry pleaded in case after judgment in debt; replication, *nul tiel record*; rejoinder, that there is such record, and fails on the day, 1. *Bro.* 7. 2. *Mo. Intr.* 56. *Thom.* 8, 9. In debt; and similar replications and issue; and defendant fails on the day to bring in the record; yet judgment of *respondeas ult.* *Rob. Ent.* 214. Outlawry of plaintiff before bill exhibited, *Clif.* 14.

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29. 58. Plea in abatement, that plaintiff is a *popish recusant convict*

61. Similar plea.

Plea in abatement, that plaintiff is waived, 1. *Mod.* 12. *Lut.* 39.

Outlawry pleaded in abatement *sub pede sigilli*, 1. *Mod. Ent.* 16. *Lutw.* 6.

That plaintiff is a *villein*; replication, that he is a baftard; rejoinder, that he is legitimate; and writ awarded to the bifhop, 1. *Bro*. 6. *Vet*. *Intr*. 35. *Her*. 6.
Plea of *villenage* by defendant againft plaintiff on original, 3. *Inft*. *Cl*. 22. 24. In writ on original, *Ib*. 27. In writ on *ca*. *fa*. *Ib*.
Protefting, that plaintiff is a *villein*; plea, that he was commorant in another vill; and iffue, *Ra*. *Ent*. 646.
That plaintiff is a *popifh recufant convict*, and has not conformed, 1. *Bro*. 5. *Thomp*. 185. *Bro*. *R d*. 466. *Inftr*. *Cl*. 19. 2. *Mo*. *Intr*. 5. *Clift*. 3. 11.
Plea in abatement, becaufe the plaintiff is a popifh recufant convict, 1. *Mod*. *Ent*. 13. *Clift*. 3.
That plaintiff is a *monk*, *Ra*. *Entr*. 368. 482, 483. 663. *Vet*. *Intr*. 199. 27.

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7. 42. 51, 52.	Plea to the perfon, that plaintiff is an alien enemy born; replication, that plaintiff refided in thefe kingdoms in time of peace, and ftill refides under the protection and licence of our lord the king.	
61.	Replication to a plea of alienage, that he was born in *Germany*, and under the protection of the king of England; demurrer thereto, and joinder. (*See* Demurrers to Pleas).	
	That plaintiff is an alien enemy, S. P. *Lill*. *Ent*. 1.	2. R. P. B. R. 3

Plea, that plaintiff is an alien enemy, 1. *Mod*. *Ent*. 9. 1. *Salk*. 2. 46. *Lilly*, 1. *Afton's Entries*, 11.
That plaintiff is an alien enemy; replication, that he is a native, born under the allegiance of our lord the king of England, 3. *Inft*. *Cl*. 15. 2. *Mo*. *Intr*. 3. *Clift*. 4. *Cl*. *Aff*. 111. *Ra*. *Ent*. 252. *Vet*. *Intr*. 49. *Finch*, 65. *Yel*. 148. Replication, and *Englifh* by *birth*, *Ra Ent*. 605. *Afht*. 11.
Plea, that the teftator was an *alien*; replication, that teftator, at the time of the making the bond and ever fince, by the licence and under the protection of the king, has been at a certain place in England; demurrer; and judgment of *refpondeas oufter*, 1. *Lut*. 34. That plaintiff is an alien born in Scotland; demurrer, *Co*. *Poftnat*. 1.
That plaintiff is an Irifhman, and not of the kindred who are entitled to the protection of the Englifh law, *Dav*. 38.

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15.	Excommunication of plaintiff pleaded *after the laft continuance in the county court*.	
	Replication, that after the laft continuance plaintiffs obtained letters of abfolution, *Lill*. *Ent*. 9.	2. *R*. *P*. *B*. *R*. 7

Plea, that the plaintiff was excommunicated by judges delegates, 1. *Mod*. *Ent*. 15. 1. *Lut*. 17. *Aoy*, 89. *Keil*. 177. 3. *Lev*. 334. 1. *Lut*. 40.
Replication to plea of excommunication to perfon of plaintiff in abatement, letters of abfolution after general imparlance, 1. *Mod*. *Ent*. 22.
That plaintiff is excommunicate, 1. *Bro*. 5. *Thomp*. 9. *Br*. *R*. 100. 3. *Inft*. *Cl*. 17. *Mo*. *Entr*. 3. *Clif* 13.
That plaintiff does not deny, fo plaint remains *quoufque*, &c. *Pl*. *Gen*. 10.
Replication, that plaintiff has been abfolved from fentence of excommunication, and defendant to anfwer; judgment for plaintiff, *Id*. 10.

In

In *case*, defendant pleads excommunication of plaintiff; replication, absolution; rejoinder, that plaintiff and person absolved are not one and the same person; rejoinder, that they are; and issue, *Pl. Gen.* 72.

That plaintiff is excommunicated by judges delegates; demurrer, and *respondeas ouster* awarded, because no certificate of the judges delegate was produced; and conclusion to the plea is bad, 1. *Lut.* 17.

2. Baron and Feme (4).

To an action brought by a feme sole, the defendant pleads in abatement of the writ, that plaintiff is covert of J. B. at the day of the writ purchased, 1. *Mod. Ent.* 7.

In *formedon in reverter* by baron and feme, abatement, for that the reversion is alledged to be in feme only, when it should be in baron and feme, 3. *Inst. Cl.* 105.; demurrer, *Her.* 464. *Asht.* 339.

Formedon by baron and feme of a moiety; plea, that the father of the wife had another daughter called A. who had issue M. yet living, to whom, together with demandant, the action accrued; replication that she is dead, *Ra. Ent.* 362.

3. Coverture (5).

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47.	Plea, that plaintiff is under coverture.	
	Special imparlance; demise of the queen suggested: *coverture* of the plaintiff pleaded in abatement to debt on bond; replication, traversing the coverture; rejoinder, taking issue,	*Lill. Ent.* 72. 123

That plaintiff feme married *after original purchased*; replication thereto, *Ash. Ent.* 9.

That plaintiff after original purchased took husband, 1. *Bro.* 7. *Br. R.* 181. 203. 204. 3. *Inst. Cl.* 30. 2. *Mo. Ent.* 7. *Clif.* 8, 14.

That plaintiff after original purchased took husband; replication, that plaintiff was divorced for cause of pre-contract before original purchased, *Rob. Ent.* 3.

That plaintiff and wife were not married according to the ecclesiastical law at the time of suing out the writ, 3. *Inst. Cl.* 60. *Hans.* 103.

That at the time of the death, &c. M. was covert of R. M. her now husband, and that plaintiffs had counted ill on a reverter, 3. *Inst. Cl.* 105.

That marriage between A. and M. was never solemnized, *Clif.* 23. *Ne unques accouple in loial matrimonie, Cl. Ass.* 78. In dower, that demandant took husband pending the writ, *Co. Entr.* 173. 1. *Br.* 1. Issue thereupon, that demandant did not take husband, *Asht.* 9. 1. *Br.* 118. *Asht.* 10.

4. Executors and Administrators (6).

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13. Plea in abatement to an action at the suit of an executor, that testator constituted plaintiff and another executors, *who is not named* (*See* Other Persons not named Plaintiff, *post.*).

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14.	Plea in abatement, that plaintiffs are not executors.	
57.	Plea, that plaintiff is administratrix, traversing her being an executrix.	
67.	Plea, plaintiff is administrator, and traverses that he is executor.	
	Another executor not named in the writ and replication,	2. R. P. C. B. 2

Plea in abatement, that two of the executors plaintiffs are within the age of seventeen years, 1. *Mod. Ent.* 16. 2. *Saund.* 209.

Debt on bond by executor of H.; plea, that defendant was bound in the same obligation to B. as well as H.; and it does not appear in the declaration that B. died in the life-time of H. 1. *Bro.* 4. That testator, on day of exhibiting bill, was alien; replication, that he died before the day, *Pl. Gen.* 335. *Hans.* 107. Traverse, replication, and issue.

That testator made plaintiff and another executor, and traverse, that plaintiff is sole executor; replication, that testator made plaintiff sole executor, *Br. R.* 200.

Plea, that testator was an *alien*; replication, that testator, at the time of the making the bond, and ever since, by the licence and protection of the king, has been at a place in England; demurrer, and judgment of *respondeas ouster*, 1. *Lut.* 34.

Heir (7).

Plea in abatement, by which the defendant confesseth the death of William White without issue, and that the plaintiff was cousin and heir; but further saith, that the said William White, the sixth of September 1660, by his will, devised all the lands, &c. to the plaintiff in tail, with several remainders over; that the plaintiff, by the death of the said William White, was seised of the reversion in tail, 1. *Mod. Ent.* 5. *Lutw.* 1557. Traversing the discent to the plaintiff alledged in the count.

In *formedon in discender* abatement, for that plaintiff is named in the writ son and heir of H. only, when it should be son and heir of H. and A. his wife; plaintiff confesses, 1. *Bro.* 170.

6. Infant (8).

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58.	Plea in abatement, that plaintiff is an infant, and has declared by attorney.	
62.	Plea, that plaintiff is an infant, and ought to sue by *prochein amy*.	
	An *appeal* abated *ex officio* by the court, because the appellant, being under age, brought it in person,	2. *Ld. Raym.* 1289

That plaintiff is an infant, 1. *Mod. Ent.* 20.

That plaintiff, an infant, ought to sue by next friend, and not by attorney, 1. *Bro.* 2. *Br. R.* 475. 466. 3. *Instr. Cl.* 55. 19. *Clif.* 11. 1. *Br.* 163. *Her.* 1.

7. Joint Contractors (9).

That others were named in the indenture, who ought to be made plaintiffs also, *Her.* 9.

8. Jointenants

8. Jointenants and Tenants in Common (10).

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67. Plea in trespass, that plaintiff and another were jointenants.

78. Plea, that the plaintiff had nothing in the close in which, &c. but in common with A. B.

The defendants plead in abatement, that the plaintiff and another stranger are tenants in common, and the other not named in the writ, 1. *Mod. Ent.* 19.

That plaintiff has nothing, unless in a joint capacity, 1. *Mod. Ent.* 21. *Clift.* 7.

Trespass that plaintiff had nothing in the tenements in which, &c. unless in common with W.; replication, and new assignment, *Tho.* 12. *Hans.* 103. 3. *Inst. Cl.* 87.

That plaintiff had nothing at the time of the trespass, unless together undivided with J. W. *Ib.* 89. Replication, and new assignment, *Clift.* 23.

That plaintiff had nothing in the messuages in the new assignment, unless in common with P.; replication, that he is sole seised; and traverses, that P. had anything, 1. *Bro.* 8. *Hans.* 103.

Forcible entry; plea, that plaintiff had nothing in the manor, unless in common with W.; replication that plaintiff's father was seised, and discent to plaintiff; and traverses the tenancy in common, *Ra. Ent.* 353.

Forgery of deeds, that plaintiff had nothing unless in common with C.; demurrer, *Ib.* 357.

Trespass; that plaintiff had nothing where trespass committed, unless jointly with C.; replication, sole seised in fee, *Ra. Ent.* 613. *Vet. Intr.* 164.

Against two, and one pleads not guilty, *Ib.* 615. Against R. and S.; R. pleads, that plaintiff holds the turbary jointly with an abbot; S. pleads, that plaintiff holds jointly with the abbot and him; replication to both pleas, *Ib.* 653. *Vet. Intr.* 164. For taking wool; plea in bar, that the wool was the property of plaintiff and one M. who delivered it to defendant; issue on the property, *Ib.* 122.

9. No such Person in Being (11).

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50. Plea, that plaintiff is dead, and no such person in being when the bill was exhibited.

No such person in being; replication, there is such person at L. *Pl. Gen.* 8. 3. *Inst. Cl* 77. 2. *Mo. Int.* 13. *Ra. Entr.* 49. 92. *Dyer*, 348. *Dig.* 122. *Her.* 5, 6. *Asht.* 10.

In assize against A. and B. his wife, that there is no such A.; demurrer, *Plo.* 89.

Trespass against A. and B.; A. pleads, that there is no such person called C. B. against whom plaintiff brings his writ together with the defendant in being; B. pleads to issue, *Ra. Entr.* 611. *Vet. Intr.* 153.

10. Other Perfons not named (12).

See Executors and Administrators, Plaintiff, *ante*. Jointenants and Tenants in Common, Plaintiff, *ante*.

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13.	Plea in abatement to an action at the fuit of an *executor*, that teftator conftituted plaintiff and another perfon *executors*, who is not named. (*See* Executors, &c. *ante*.)	
	That there was another churchwarden not named in the bill; demurrer and caufes, - - - -	2. R. P. B. R. 1

11. Partners (13).

17. Plea in abatement, that fome of the plaintiffs were partners with the defendants, and therefore could not fue.

A plea in abatement after *oyer*, that the plaintiff's partner is not named in the writ, 1. *Mod. Ent.* 20. *Clift.* 8.

II. To the Perfon of Defendant.

1. Baron and Feme (14).

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6.	Plea, that defendants fued as man and wife *ne unques accouple in loial matrimonie*.	
7.	Replication thereto.	
9.	Plea of mifnomer in the *Chriftian* name of wife pleaded to an action againft hufband and wife. (*See poft.* Mifnomer of Defendant).	
15.	Plea in abatement by hufband and wife fued as *executrix*, that adminiftration was granted to the defendant Elizabeth.	
	By baron and feme, mifnomer in the wife, in B. R. -	2. R. P. B. R. 29.

That F. the wife of A. (named in the writ Duchefs of S.) has loft her name of dignity by marriage, 1. *Bro.* 3.

False judgment, the writ of fummons fuppofes the defendant to be tenant; abatement, for that plaintiff is tenant for years, and the reverfion belongs to defendant's wife for life, *Rob. Ent.* 322.

2. Coverture.

2. Coverture (15).

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6. Replication in *assumpsit* to a plea of coverture in abatement, viz. that defendant is not covert, and issue thereon; award of inquiry conditional; *venire*.

31. Replication to a plea of coverture in abatement, protesting as to the sufficiency of the plea; protesting also, that the defendant is not a feme covert; for replication, before the cause of action accrued, the defendant had *eloped* from her husband, and that the work, &c. was done for the defendant at her request, and on her credit only.

41. Plea in abatement to the person of defendant's coverture; affidavit of truth of plea. (*See* Practical Forms).

57. Plea, that defendant is under coverture.

That defendant a feme is married; replication and rejoinder, *Lill. Ent.* 1. - - - 2. R. P. B. R. 12

Plea, that defendants were not married according to ecclesiastical [illegible] *Lill. Ent.* [illegible] - 2. R. P. C. B. 51

Plea of coverture of defendant sued as sole, - Imp. Pr. C. B. 266

Plea in abatement; defendant under coverture at the time of the writ; replication and rejoinder, - 2. R. P. C. B. 157

Replication to a plea of coverture, that the defendant is concluded by way of *estoppel*, by reason of her imparlance, 1. *Mod Ent.* 8. *Lutw.* 23.

Coverture pleaded, 1. *Mod. Ent.* 9. *Mod. Cases*, 230. *Raym.* 395. A replication thereto.

That defendant after original purchased was covert; replication, that she was sole, and traverses, *Hans.* 104. *Br. R.* 203. 3. *Br.* 138. *Asht.* 8. *Her.* 5. Replication, was not covert, *Cl. Ass.* 5. 14. 3. *Instr. Cl.* 60, 61, 62. *Reg. Pl.* 290. *Pl. Gen.* 4. *Cl. Man.* 435. 2. *Mo. Int.* 7.

That plaintiff, at the time of speaking the words, was, and yet is, defendant's wife; replication, that she was not, nor is, the wife of defendant; and issue, 1. *Bro.* 63.

That defendant was covert at the time of the promise made, *Clif.* 5. *Cl. Ass.* 81.

Not covert pleaded in an inferior court, *Cl. Ass.* 106.

Abatement; plea, coverture; estoppel by imparlance; judgment of *respondeas ouster*, for that the plea was only in abatement, and not pleadable after imparlance, 1. *Lut.* 23.

3. Executors and Administrators (16).

See Other Persons not named, Defendant.

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13. Plea in abatement by defendant sued as executor, that testator appointed defendant and another (who is not named a defendant) executor. (*See* Others not named, *ante.*)

Plea

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54.	Plea by defendant sued as executor, that the testator appointed an executor, who renounced, and that administration *durante minoritate* was granted to defendant.	
55.	Plea in abatement, *husband and wife* sued as executrix, that administration was granted to the defendant Elizabeth.	
56.	Plea by administratrix sued as executrix, that she ought to be sued as administratrix, and not as executrix.	
58.	Plea, that others who are co-executors are not named defendants.	
	That defendant is administrator, not executor, *Lill. Ent.* 5.	2. R. P. B. R. 10
	Plea in abatement to an action by the present against the late churchwarden, that another was churchwarden with defendant not named; traversing that defendant was sole churchwarden, - - - - - -	*Lill. Ent.* 11

Plea, administrators and not executors, 1. *Mod. Ent.* 4.
Plea in abatement, that she is an administratrix *durante minoritate* of an infant, 1. *Mod. Ent* 14. 1. *Lutw.* 20.
Plea in abatement, that the testator was alive at the time of the writ purchased, 1. *Mod. Ent.* 18. *Lut.* 13.
That in the writ, that defendants were executors, and had no additions as such, 1. *Bro.* 2. 3. *Instr. Cl.* 50.
Debt against one executor, that testator made defendant and one B. executors, who is alive and not named in the writ; replication, that testator did not appoint B. executor; and issue, 1. *Bro.* 4. *Thomp.* 1. 3. *Inst. Cl.* 46, 47. *Pl. Gen.* 11, 12. 2. *Mo. Intr.* 18. Replication, that testator made defendant sole executor, *Pl. Gen.* 11. Replication, that B. defendant never administered as executor, *Thomp.* 1. *Hans.* 102. *Rob. Ent.* 229. 3. *Instr. Cl.* 48. That *administration* was granted to another, and not to defendant, *Cl. Ass.* 105.
In *debt* by T. as administrator of A.; plea, that A. made T. and one W. executors; and traverse, that A. died intestate, *Thomp.* 140. 3. *Instr. Cl.* 47. *Bro. T. M.* 465.
Debt against executor of S.; plea, that S. died intestate, and administration was committed to defendant; replication, that S. made defendant executor; and traverse, that he died intestate, *Pl. Gen.* 263. *Clif.* 15, 16. After sequestration made by ordinary of intestate's goods, *Pl. Gen.* 12. That administration was committed to defendant, and that one J. who is alive is not named in the bill, *Thomp.* 1. *Pl. Gen.* 337. 2. *Mo. Intr.* 18.
Debt against executor; plea, that testator made defendant and another executor not named in the writ; replication, that executor not named died before original purchased, *Br. R.* 199. *Clif.* 15. That T. died intestate, and administration was committed to A.; and traverse, that defendant is executor, or administered as executor, *Thomp.* 221.
Debt against executor of T. that T. died intestate, and administration was committed to defendant; replication, that defendant, before administration committed, administered goods as executor; and demurrer, 2. *Vent.* 178. Judgment for plaintiff.
Case against two executors; plea, that W. died intestate, and that defendant took out letters of administration to the deceased, and so ought to be impleaded as *administrators*, *Hans.* 66.
Plea by administrator that letters of administration were revoked, *Thomp.* 221. In *case*, plea by *three* executors by attorney, that *two* of the executors were within age, viz. seventeen years.

For

For that executor is within age by attorney, 2. *Sand.* 209.
For that defendants, as executors, had no additions, 3. *Instr. Cl.* 50.
Debt against administrator after oyer of the writ; the defendant pleads, that the writ is tested before the letters of administration, and plea held good on demurrer, 1. *Lut.* 8, 9.
That testator was alive at the time of the writ purchased, and *respond as* over for fault in the plea, *Ib.* 13.
Judgment that writ be quashed, because it appears that the writ bears date before money due, *Ib.* 16.
In debt against administrator, plea that he is administrator *durante minore ætate*, and demurrer; and *respondeas ouster* awarded for want of the averment; and this he is ready to verify, *Ib.* 20.
Assumpsit against executor; he pleads, that he is administrator by letters patent granted by the D. of Canterbury, &c.; and held bad on demurrer, for that it was not averred that intestate had *bona notabilia*, 1. *Lut.* 29.
In *debt* in B. R. by baron and feme administratrix *de bonis non, &c.* against executrix after special imparlance; plea, that administration was committed to her on, &c. by the vicar-general and official of the bishop of D. &c.; demurrer, and judgment against defendant for not traversing that no administration was had before letters of administration granted to him, 1. *Lut.* 890.

4. Heir (17).

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43. Plea in abatement by defendant sued as heir of *infra ætatem*. (*See* Infant Defendant, *post.*).
43. Similar plea to *debt on bond* against an heir of obligor; parol demurrer, defendant being under age. (*See* Infant Defendant, *post.*) Replication to this plea.

In *debt* against an heir, that there was another heir alive beside defendant, against whom plaintiff should have brought his action, *Thomp.* 9. 3. *Instr. Cl.* 48. 1.
Heir at law, sued upon the bond of the ancestor, pleads, that plaintiff brought the action pending against her as executrix, 3. *Lev. Rep. and Lev. Ent.* 25. 54, 55.
Debt against brother and heir; plea, that brother, on the day of original purchased, was alive, *Her.* 1.

5. Infancy (18).

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43.	Plea in abatement, by defendant sued as *heir* of *infra ætatem*. (*See* Heir Defendant, *ante.*).	
43.	Similar plea to *debt on bond* against an *heir* of obligor; parol demurrer, defendant being under age; replication to the above plea. (*See* Heir Defendant, *ante.*).	
58.	Plea, that defendant is an infant.	
63.	Plea, that defendant is a minor, and ought not to answer till of full age.	
	Infancy pleaded by guardian, *Lill. Ent.* 3. - -	2. R. P. B. R. [illegible]
	Infra ætatem; replication, necessaries, *Morg. Pr.* 221.	2. R. P. C. B. [illegible]

Plea of infancy; replication, full age, and issue, *Morg. Pr.* 223, 224.
Infancy pleaded by guardian, 1. *Mod.* 11. *Lilly*, 3.

6. J[illegible]

6. Joint Contractors (19).

See PARTNERS DEFENDANT, *post.*

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16. Plea, that another joined in the promise, and that the promise was not made by defendant alone.

17. Replication thereto, that defendant alone promised.

17. Plea in bar; *non assumpsit* to some counts, and in abatement to others, that the promises were made jointly with another, and not by the defendant alone.

13. Plea in abatement, that one C. N. and one W. K. promised jointly with defendant, and that defendant did not promise; replication and issue.

13. Plea in abatement of the writ and count in *debt on bond*, that two were jointly bound, and only one sued.

17, 48. Plea as to all except, &c. that the promises, if any, were made by defendant and one J. K. jointly, traversing that they were made by defendant alone; REPLICATION, that they were made by the defendants separately.

13. Plea, that another signed the bond with the defendant.

15. Plea, that defendant was bound jointly with another, who is living not named.

18. Plea, that the promises were made by defendant and not A. B. and that the said A. B. is still alive.

That others not named in the declaration jointly executed bond with defendant, *Lill. Ent.* 2. — 2. R. P. B. R. 17

That another covenanted and executed charter-party of affreightment jointly with defendant, *Lill. Ent.* 7. — *Ib.* 18

Plea in abatement to the count in *assumpsit* for use and occupation, that the promises were made by defendant and one G. B. jointly, — 1. H. Bl. Rep. 236

Plea in abatement, that the defendant sealed the bond jointly with E. F. and G. who are not named, 1. *Mod.* 10. 5. *Mod.* 144. *Lilly*, 2.

That defendant is jointly bound with another not named, 3. *Instr. Cl.* 48. 2. *Mo. Int.* 17. *Clif.* 4. 7. *Asht.* 7.

That the purchase in the declaration mentioned was made by defendant and another who is not named in the writ; replication, that the purchase was made by defendant alone; and traverse, that it was made by defendant and another, 1. *Bro.* 8. *Mo.* 102.

Plea, that the contract was made by defendant and another jointly; replication, that it was made by defendant alone; and traverse, 1. *Bro.* 8.

That as well the two others named in the bond as the defendant were jointly bound, 1. *Lut.* 696.

7. Jointenants

7. Jointenants and Tenants in Common (20).

See NON-TENURE and SOLE TENURE.

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In trespass, that one of defendants is tenant in common with plaintiff; B. R. replication, sole seised; traverse, demurrer with causes, joinder, continuance, and affidavit of truth, - - - - - - 2. R. P. B. R. 40—43

In *dower*, jointenancy with feme to part, non-tenure to the residue, 3. *Instr. Cl.* 92. *Vet. Intr.* 114. *Asht.* 10. 2. *Mo. Ent.* 16. Jointenancy with feme by deed to part; replication, sole tenure, *Ra. Ent.* 233. *Vet. Intr.* 114.

Dower against two; to part severally plead non-tenure, *Rob. Entr.* 267. Jointenancy with wife by deed; replication, sole tenure; *sci. fa.* to wife to maintain jointenancy, *Ra. Ent.* 415. 233.

Assize. Disclaimer by one; others plead, that they hold jointly with R. and H. by deed from I. pleaded in court; replication, that defendants are sole tenants, and traverse that others have anything; *scire facias* to maintain the jointenancy, *Pl. Gen.* 120. *Rob. Ent.* 134. *Ra. Ent.* 62. 66. *Vet. Int.* 143. 248. 187. 139.

That tenant holds tenements jointly with A. by feoffment; replication, sole tenure, *Asht.* 325.

Jointenancy with wife in *formedon* by fine; replication, sole tenure; and traverse, that wife had anything; and issue, *Co. Ent.* 317.

In *assize*, that he is jointenant with wife of lands out of which a rent arises of the grant of H. and others by deed pleaded in court; replication, that defendant held lands whereout, &c. from plaintiff, and disseised him of the rent, and afterwards enfeoffed the said H. and another, and clandestinely took back the estate to him and his wife to defraud plaintiff, and he alone took the profits; demurrer, *Ra. Ent.* 80. Jointenancy with one L. by deed from I. pleaded in court; replication, that he alone was seised until disseised by defendant, who enfeoffed I. who re-enfeoffed defendant; plaintiff re-entered, and was seised till the disseisin, *Ra. Ent.* 62.

Partition, that defendant has nothing in tenements unless in common with plaintiffs and others not named in the writ; replication, that plaintiff and defendant hold in jointenancy; and traverse, that other persons have anything, *Co. Ent.* 41.

Right of ward against W. and J.; W. pleads jointenancy of the land with C. and non-tenure of the body; J. non-tenure of land and body; replication, sole tenants of the land, and tenants of the body, *Ra. Ent.* 386.

Trespass against J. and M.; J. pleads non-tenure, M. pleads jointenancy with one H. of the gift; replication to both pleas, that he was seised until defendants disseised him and enfeoffed strangers, who took the profits; a joinder by J. that the said W. and H. received the profits, and traverses that he and W received the profits; and W. pleads, that he and H. held jointly, and traverses that he and J. took the profits; and issue on both traverses, *Ra. Entr.* 276.

9. Partners

8. Partners (21).

See JOINT CONTRACTORS, *ante*.

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27.	Plea in abatement, that the promises *were made* by defendant and twenty-two other partners not named *jointly*, and not separately; replication to the above plea.	
ib.	Replication to similar plea.	
28.	Plea in abatement, that the promises *were made* by the defendant and his partners *jointly*, and not by him separately; special demurrer, and joinder. (*See* Demurrer to Pleas.)	
29.	Plea of *privilege* of an *attorney* a partner with another attorney, one of B. R. the other C. B. (*See* Privilege, *ante*.)	
44.	Plea in abatement in an action of *assumpsit* in B. R. declaring against one only in a partnership debt.	
59.	Plea, that the promises were *made by defendant jointly* with another, with whom he was partner.	
60.	Replication, that defendant and his pretended partner are one and the same person.	
	Partnership pleaded in abatement, - -	Imp. Pr. C. B. 36.

For that partners are not named in the writ, *Clift.* 8.

III. To the Writ and Count.

1. To the Form of the Writ (22).

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[illegible]	Plea, that defendant is in custody of the sheriff, and not of the marshal.
[illegible]	Plea in abatement, that defendant is not an *attorney*, as alledged in the bill.
[illegible]	Plea in abatement of the writ, that there is no return thereon, and no pledges found.
[illegible]	Abatement to the writ in *dower*, that deceased husband was a knight.
[illegible]	Plea in abatement to the first count in the declaration; *a writ of error pending* to the second; and *nul debet*.
[illegible]	Plea in abatement, that defendant is not an *attorney*, as alledged in the bill.
[illegible]	Plea by an *attorney* of C. B. that he is impleaded by *original writ*, and not by *bill* (*See* Privilege, *ante*.)
[illegible]	Plea in abatement for putting the wife's name before the husband's; *confesses* plea, and prays a better writ. (*See* Judgments in Abatement.)

Plea

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73.	Plea in abatement for omitting a word in the writ, and judgment of *quassetur billa*.	
ib.	Plea in *debt* by *administrator* for omitting two words in abatement; plaintiff confesses, and judgment. (*See* Judgments.)	
74	Like judgment to like plea. (*See* Judgments.)	
ib.	Plea in abatement, that one of the defendants died before the writ sued out; REPLICATION thereto.	
77.	Plea in abatement to the writ and declaration, that plaintiff's testator was a bankrupt, and never obtained his certificate.	
	A writ of error depending in the exchequer chamber in abatement to an action of debt on judgment in B. R. *Lil. Ent.* 11. - - - - - - -	2. R. P. B. R. 2
	Plea in abatement to a *quod permittat* to pull down certain buildings, for that the writ doth not shew the nature and number of the buildings; demurrer, and joinder, -	3. L. Ray. N. Ed. 18
	Plea in abatement to action of debt for bribery at an election of a prior suit instituted for the same cause; *replication*, that before that suit was instituted, plaintiff in this sued out and served his writ of *latitat*; *rejoinder*, that before the exhibiting of the bills of either, the plaintiff in the former suit issued his *latitat*, which was served on defendant before notice of plaintiff's writ in this suit; *surrejoinder*, shewing the true time of issuing each *latitat*, in contradistinction to the fictitious relation to the last day of Term when sued out in Vacation, and that plaintiff's had priority; special demurrer to surrejoinder, for being a departure from the replication, which states a *latitat* sued out by plaintiff on *thirtieth June*, but surrejoinder alledges that it issued *first July*, and for not traversing, &c. the priority of service averred in defendant's rejoinder, -	3. Burr. Rep. 14
	Plea in abatement to declaration for money lent and advanced, another action pending for the same debt; demurrer and joinder, - - - - - -	2. Ld. Raym. 12

That plaintiff died *before* suing out the writ; replication, still alive, 3. *Instr. Cl.* 6 1. *Bro.* 4. 2. *Mo. Ent.* 15.

That plaintiff died *after* suing out the writ, *Clift.* 6.

In *appeal*, that the elder brother of the appellant was alive at the time of the appe and died after the appeal sued out, *Hans.* 258.

In trespass against A. and B. not guilty by B. and that A. died before the day of su out the writ; replication, that he is alive, *Cl. Ass.* 10. 2. *Mo. Int.* 15.

In *assize*, that there is no such corporation, *Vet. Intr.* 200. No such bishop England, *Ra. Ent.* 18.

Writ against dean and chapter; plea, that deanery was dissolved by act of par ment, *Ra. Ent.* 101.

A plea in abatement, because the plaintiff died before suing out o the writ, 1. *Ent.* 20. *Clift.* 6.

In *trespass*, because *Orchard* is put in the writ, contrary to the form of the Reg 1. *Bro.* 1. 3. *Instr. Cl.* 51.

For that land is demanded by half an acre of land, 1. *Bro.* 3. *Cl. Ass.* 8

For that it was according to the law and custom of the kingdom of our lord Philip and lady Mary, and queen of England, when it should be according to the custom of our kingdom of England. 1. *Br.* 1. *Hans.* 103.
For word (*per*) omitted in the writ; and judgment thereon, *Cl. Ass.* 2. *Reg. pl.* 221.
In *trespass*, (that tenant deforced him, &c.) omitted in the writ, *Cl. Ass.* 14. 2. *Mo. Int.* 19.
For that in the original there are only fourteen days between the *teste* and return, and leave to purchase a better writ, 3. *Instr. Cl.* 59. *Asht.* 6. For that there is incongruous Latin in the original, *Cl. Ass.* 2. *Asht.* 5.
For defect of form, for that the name of the wife is put before the name of the husband in the descent; and the demandant confesses, and has leave to get a better writ, *Cl. Ass.* 12. *Reg. pl.* 289. *Her.* 7.
In the writ, a certain number of beasts is not named, 1. *Bro.* 1.
In *trespass*, for that there is no such form in the Register, *quare clausum fregit et intravit*, *Rob. Ent.* 1.
That it does not appear by the return of the writ that plaintiff found to the sheriff pledges to prosecute, *Ib.*
In *accedas ad Curiam*, for that in the writ it was commanded to the sheriff that he should come to the court of the manor, and not to the court of the Lord R.'s manor, 1. *Bro.* 7.
In *trespass*, abatement, for that the word (*mesuagium*) is written with a double ss, and the word (*reddat*) should be (*reddant*), and the word (*&c.*) is inserted in the writ, and not in the Register of writs; demurrer, and *respondeas ouster*, 2. *Sand.* 30.
No such writ in the Register of writs, 3. *Instr. Cl.* 57.
For false Latin, *Cl. Ass.* 2, 3. 3. *Instr. Cl.* 57. *Reg. pl.* 292. 2. *Mo. Int.* 11.
1st, That the averment of the life on the original writ of a person unduly outlawed is in the wrong county; 2d, false Latin; 3d, repugnancy, *Clif.* 1.
Plea to *venire facias* at *nisi prius*, for that it was commanded to the sheriff of S. when the issue ought to be tried by men of the city of L and *venire facias de novo* awarded, 1. *Bro.* 2.
In *assize*, plea in abatement, for that writ was not according to the form of the Register, *octavas* instead of *octabas*; and that they were two words having no signification; and that the writ was returnable before our lord the king at Westminster at a day certain, when it ought to be returnable *ubicunque, &c.* *Vid.* 90.
For insufficiency of the return of original, 2. *Mo Intr.* 12.
That writ was made returnable by the late sheriff, when it ought to be returnable by the present, *Cl. Ass.* 7. 1. *Bro.* 3.
For that the sheriff had no authority to return, *Clif.* 5.
Variance between the writ and Register, *Reg. pl.* 276. 2. *Mo. Intr.* 10. (*See post.* Variance.)
Variance pleaded after imparlance; replication, *precludi non*, because imparlance was special, *Clif.* 20.
Defendant in the original is described of a parish, viz. A. and it is not alledged in what county the parish is, *Ra. Entr.* 49.
Debt against the sheriff *alias dictus, &c.* on escape; abatement, for that the *alias dictus* is surplusage, not being founded on the specialty, *Her.* 7.
That he claimed to be his right omitted in the original, *Asht.* 6. *Her.* 6. *Asht.* 6.
Formedon of a cottage against the form of the Register, *Her.* 464. *Asht.* 322.
For that the descent of the demandant is not alledged in the writ, *Co. Ent.* 320.

1. Addition of
1. Plaintiff.
2. Defendant. } (23).
3. Place.

1. Addition of Plaintiff.

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46.	Plea in abatement, that plaintiff was no baronet when he sued in the stile of knight and baronet.	
	Plea in abatement against a clerk of B. R. that plaintiff is a knight; demurrer; joinder; judgment of *respondeas ouster*, - - - - -	2. Ld. Raym. 1014.

Plea to an action brought by an *attorney*, that he was forejudged, 1. *Mod. Ent.* 3.
Misnomer of the addition, 1. *Mod. Ent.* 20.
In *dower*, that demandant was a knight at the time of suing forth the writ, *Cl. Ass* 1. 1. *Instr. Cl.* 81. *Reg. pl.* 287.
That baron demandant was made a knight before his death, and *breve cassetur*, *Cl. Ass.* 1.
That plaintiff lost her dignity by marriage, 1. *Bro* 3.

2. Addition of Degree of Defendant.

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3.	Plea, that defendant is of another addition than that by which he is sued, namely, *merchant* instead of *broker*; replication to the above plea, that defendant was a broker, as, &c.	
24.	Plea in abatement of the writ (in *trespass* in C. B. against seven defendants, after plea by two of not guilty) by four others jointly of the want of proper additions.	
25.	Special demurrer thereto, with causes, and joinder (*See* Demurrers to Pleas); plea of misnomer by seventh.	
26.	Special demurrer thereto, and joinder thereto (*See* Misnomer of Defendant, *post. and* Demurrer to Pleas).	
38.	Plea, that defendant is of another addition than that by which he is sued; replication, that defendant was a broker.	
54.	Plea, that defendant is named without his addition *carver*.	
54.	Similar plea, *innholder*; REPLICATION thereto, that he sued out original against defendant by his proper addition.	
ib.	Plea, that defendant is a priest in holy orders, and not a yeoman.	
	That defendant is an esquire, *Lill. Ent.* 6. -	2. R. P. B. R. 6
	A doctor of physic, *Lill. Ent.* 2. - - -	*Ibid.*
	The want of addition, - - -	2. R. P. C. B. 5
	That defendant is a baronet, and not a knight and baronet, *Lill. Ent.* 5. - - - - -	*Ibid.*

Abatement

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Abatement in trespass, defendant a yeoman, and not a cheesemonger, - - - - -	2. R. P. C. B. 157
Plea in abatement for want of addition removed into B. R.	Cl. Ass. 405

Abatement, for that the defendant is a baronet, and not a knight and baronet, 1. *Mod. Ent.* 24. 5. *Mod.* 302.
That defendants are nieces and not sisters to William, 1. *Mod.* 2.
Misnomer of addition of degree, 1. *Mod.* 10. 1. *Salk.* 7.
That defendant is a yeoman, and traverse that he is a gentleman, *Pl. Gen.* 4. That defendant is known by the name of T. gentleman, and traverses that he is known by the name of T. broker, *Rob. Entr.* 91. *Rast* 108. *Asht* 2. *Up. Ben. Pr.* 2. Not an esquire, *Her.* 8. That T. the wife of S. (named in the writ Duchess of S.) has lost her name of dignity by marriage, 1. *Bro.* 3. That defendant is a chapman, and not a husbandman, 3. *Inst. Cl.* 80. *Ra. Ent.* 108. *Vet. Intr.* 44. *Asht.* 2. 67. 222. 217. A butcher, and not a husbandman, 2. *Mod. Intr.* 12. That defendant is a baronet, and not a knight and baronet, 1. *Vent.* 154. *Clif.* 17. That defendant is a gentleman, and not a physician, *Clif.* 16.
In appeal against a spinster, plea that she is a gentlewoman; estoppel, that defendant was prosecuted by that name, *Dyer*, 88.

3. Addition of Place.

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73.	Plea, that C. is parcel of R. in trespass at R. and C. No addition of place of defendant's dwelling in the writ; demurrer; joinder; continuance; judgment *respondeat ouster*, - - - - - -	2. RP. BR. 37

That there are two vills in the county, viz. Old M. and New M. and neither without an *addition*, and traverses that there is a vill in the county called M. without addition, 3. *Instr. Cl.* 72. *Cl. Ass.* 4. 1. *Bro.* 2. *Mo. Int.* 341. 343.
In *trespass* at R. and C. defendant says, that the said place called C. is within the said vill of R. and parcel of the vill; plaintiff traverses, and issue, *Cl. Ass.* 3 *Reg. pl.* 287.
For defect of addition, *vill* or hamlet, *Clif.* 15, 16.

Commorancy / Conversancy } Misprision of (24):

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63.	Plea in abatement to an *indictment*, that the defendant was *conversant* in the parish of St. M. and not in the parish of A. as is supposed by the indictment.
54.	Plea, that defendant was *commorant* in the parish of St. James, traversing his commorancy at L.; replication thereto; *dies datus* to rejoin, - - -

Plea,

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63. Plea, that defendant was commorant in the parish of St. James, and traversing that he was commorant in London; REPLICATION, that the defendant, some short time before the issuing of the writ, was commorant in London; demurrer thereto, and joinder (*See* Demurrer to Pleas, &c.).

73. Plea in abatement, non-commorancy.

Plea of misprision of commorancy, 1. *Mod. Ent.* 7.

In *debt* on bond defendant pleads, that he was commorant at B. in another county; replication, that defendant is so described in the bond, 10. *H.* 6. 8.

That defendants were commorant at B. C. and traverse, that they were commorant at C. B. 1. *Bro.* 6. 3. *Instr. Cl.* 81. *Ra. Ent.* 108. 195. 299. *Vet. Intr.* 80. Replication, that parish is named as well by one name as another, *Ra. Ent.* 100. *Upper Bench Pr.* 58. *Ra. Ent.* 300. 298. That he was commorant at B. in the county of S. and traverses, that he was commorant at B. in the writ named, *Cl. Ass.* 13.; and same in *appeal*, and issue, *Hans.* 268.

Replication to a plea of misprision of commorancy, that H. is a hamlet of L.; rejoinder, that it is a vill by itself, *Ra. Ent.* 108. That defendant is called R. Do, and not R. Dy, and was commorant in another place, *Id.* 298.

One defendant pleads misnomer, another pleads that he was commorant in another vill, *Id.* 610. *Vet. Intr.* 43.

Debt against W. of L.; and defendant says, that he was at L. as a guest only, and was not commorant with his family at L.; replication, that at the time of executing the deed, and before, defendant was commorant with his family at L. and not as a guest; demurrer; and judgment for plaintiff, *Ra. Entr.* 160.

Plea in abatement of the writ, that there is no such town or hamlet to an action *qui tam*, 1. *Mod.* 8.

3. Misnomer of

1. Plaintiff.
2. Defendant.
3. Place.

} (25).

1. Misnomer of Plaintiff's Name.

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Misnomer in the stile of plaintiffs a corporation; traverse, and demurrer thereto; joinder; continuance; and judgment of *respondeas ouster*, *Lill. Ent.* 4. — 2. R. P. B. R. 1

Misnomer in the stile of a corporation, 1. *Mod. Ent.* 12.

2. Misnomer of Defendant's Name.

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1. Plea of misnomer of the defendant in the *christian and surname*.

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2. Replication of *nolle prosequi* to the above plea.
2. Plea of misnomer of defendant's *surname* in the *county court*; *affidavit* of the plea.
9. Plea of misnomer in *christian* name of wife pleaded in an action against *husband and wife* (*See* Baron and Feme Defendant *ante*).
16. Plea in abatement by two defendants in *trover* of a misnomer of one.
26. Plea in abatement in *trespass* against seven in C. B. of misnomer by the seventh of christian name, after plea by two of not guilty, and want of additions jointly of the other four; special demurrer thereto, and joinder (*See* Addition of Defendant *ante*, and Demurrer to Pleas).
32. Plea in abatement of the bill in B. R. of misnomer in defendant's surname.
34. Misnomer of *christian* name; plea in abatement *Thomas*, and not John.
37, 38. Plea of misnomer in the defendant's *christian* name; replication thereto, that defendant is called and known as well by one name as the other.
47. 50. Plea of misnomer of defendant's *christian* name.
81. Plea in abatement, that the defendant was baptized by the name of William, traversing that he was ever called or known by the name of *Matthew*.

Misnomer in defendant's *christian* name, *Lill. Ent.* 6. *C. B. Imp. Pr.* 266. - - - - 2. R. P. B. R. 8. 29. 31
Of defendant's *surname*, *Lill. Ent.* 1. *Pl. Ass.* 452. *Ibid.* 8
Misnomer in defendant's *christian* name; imparlance to plea; further imparlance; replication; estoppel; defendant put in bail by name of Elizabeth; demurrer; joinder; continuance, *Lib. Placitandi*, 1. - *Ibid.* 31. 33, 34
Plea of misnomer in abatement of the writ in *trespass*, 2. R. P. C. B. 15
Plea in abatement, that defendant was baptized by the name of Richard James, and not James Richard; demurrer, and joinder, - - - 5. T. R. 195

Misnomer in the *surname*, 1. *Mod. Ent.* 19. 1. *Mod. Ent.* 8. 4. *Mod.* 347. 6. *Mod.* 115. 1. *Salk.* 675. *Mod. Cases*, 289. *Lilly Ent.* 1.
Plea in abatement for misnaming his name of baptism, 1. *Mod. Ent.* 18. *Lut.* 10.
That *defendant* is called J. R. and not J. W.; replication, that he is called as well by the name of J. W. as by the name of J. R. *Tho.* 1. *Cl. Ass.* 103. *Pl. Gen.* 7. Replication, and issue, *Ra. Entr.* 49, 50. 54. 108, 296. 334. 516. 616. *Vet. Intr.* 27. 44. 221, 222. *Upper Bench Pr.* 3. *Asht.* 1.
That defendant is called W. Spechell, and not W. Specell; replication, that he is called as well by the one name as the other, *Cl. Ass.* 11. Replication to the misnomer, *Cl. Mar.* 435.
Name of baptism, 1. *Lut.* 10. Misnomer in abatement of bill, *Asht.* 1.
Plea by one defendant, that the other being an *outlaw* was misnamed in the addition of junior for senior; demurrer; and judgment to answer over, for that one defendant cannot plead misnomer of his co-defendant, 1. *Lut.* 35.
That defendant is named W. L. of H. and not W. L. of L. in abatement; replication, that he is called as in the writ, *Ra. Ent.* 353. *Vet. Intr.* 211.

Trespass

Trespass against A. and B.; A. pleads in bar, B. pleads misnomer of the surname; replication, called as well by one name as the other, *Ra. Ent.* 610. *Vet. Intr.* 43.

Writ for W. and Agnes his wife; plea, that name of the wife is Anna, *Her.* 1.

Plea of misnomer in custody of sheriff, *Ra.* 616.; at large, *Ib.*

Three defendants come in their own persons, and say, that they are the same persons against whom plaintiff brings his writ: first says, that there are two of the same in the same vill, and that he is junior; second says, that he is commorant in another vill; and the third pleads misnomer, *Ra. Entr.* 610. *Vet. Int.* 43. *Asht.* 3.

Misnomer of *christian* name, *Tho.* 1. *Pl. Gen.* 8. 3. *Instr. Cl.* 68. 70. 2. *Mo. Int.* 12. *Clif.* 16. *Rast. Ent.* 296. *Her.* 9. *Surname*, 1. *Bro.* 3. *Tho.* 1. 3. *Instr. Cl.* 67. *Reg. pl.* 288. *Her.* 1.

Misnomer pleaded in abatement of bill in B. R. *Tho.* 1.

Misnomer of *christian* name of wife in the writ of summons, *Cl. Ass.* 12. 3. *Instr. Cl.* 68. *Reg. pl.* 289. *Hans.* 119.

C. J. and B. come in their own persons, and say, that they are the same persons against whom plaintiff brings his writ; C. says, that there are two of the same name in the same vill, and that he is *junior*; J. says, that he is *commorant* in another vill; B. pleads misnomer, 3. *Instr. Cl.* 68.

3. Misnomer of Place.

Misnomer of parish in *appeal* of death, *Br. Red.* 2. *Reg. pl.* 284.

In *appeal*, that within the county of Middlesex there is a certain parish called by the name of St. James within the Liberty of Westminster, but not by the name of the parish of St. James, Westminster; demurrer thereto, 1. *Bro.* 2. *Br. R.* 2. 2. *Mo. Int.* 13. In *dower*, that part of the lands demanded lies in M. and not in E. nor W.; replication, that M. is a hamlet of E. *Rob. Int.* 285. *Formedon*, that part of the lands demanded lies in G. and traverses that it lies in H. and issue, 2. *Bro.* 165.

In *trespass* at R. and C. that C. is within the vill of R. parcel of the same, *Cl. Ass.* 3. 13.

That there are two vills in the country, viz. Old M. and New M. and neither without an addition. replication, that the vill is called M. only, *Ra. Ent.* 47. 108. 300, 301. 615. 640. *Vet. Int.* 44. 217. 222. *Her.* 9. *Moile*, 138. *Asht.* 3. Replication, that defendant is so described in the bond; demurrer, *Ra. Ent.* 159.

4. Misprision of the Vill, Hamlet, Parish, Hundred, and County (26); AND 5. No such Vill (27).

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72. Plea in abatement in an *appeal* of murder for misnaming the parish; demurrer; and judgment (*See* Demurrers, Judgment).

ib. Plea in abatement for not distinguishing the vill.

ib. Plea in abatement for naming the defendant of a place which is no vill.

73. That C. is parcel of R. in trespass at R. and C.

Misnomer of the town wherein the entry and trespass is supposed to be pleaded in abatement, 1. *Mod. Ent.* 19.

Abatement in *Hue and Cry*, for that the hundred in the count is parcel of another hundred, 1. *Mod. Ent.* 19.

A plea in abatement, that there is no ſuch town or hamlet to a *qui tam*, 1. *Mod.* 8.

By miſtaking the county, 1. *Mod. Ent.* 12.

No ſuch vill in the county; replication, there is ſuch a vill in the county called W. 3. *Inſt. Cl.* 77. *Ra. Ent.* 108. 298. 334. 353. *Dyer*, 227. *Vet. Int.* 80. 86. 129, *Upper Bench Pr.* 2. *Her.* 8. *Aſht.* 2. *Coke's Ent.* 121.

Treſpaſs at I. in the vill of E.; defendant ſays, that I. is no vill, nor hamlet, nor place out of the vill, *Cl. Aſſ.* 13. 3. *Inſtr. Cl.* 70. *Reg. pl.* 287.

Grand cape againſt A. and B.; law at the day of non-ſummons by A. B.; plea, no ſuch vill in the county; demurrer, *Ra. Entr.* 424.

Treſpaſs at W. in the pariſh of L.; that W. is in the vill of D. within the pariſh of L. and traverſes that it is a vill, &c. called W.; and iſſue, *Ra. Ent.* 684.

In *formedon*, that land demanded is in C. and not in B. *Raſt. Ent.* 362. *Her.* 6. *Aſht.* 322. *Vet. Intr.* 90. In *aſſize*, that part of the lands lie in another vill, *Ib.* 79. That the corporation is maſter, brethren, &c. of B. and traverſes that it is a fraternity of S. *Ib.* 68.

6. Variance

Between 1. Writ.
2. Specialty.
3. Teſtament; and
4. Letters of Adminiſtration. } (28).

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69.	Plea of variance between the writ and ſpecialty.	
70.	Plea of variance between the writ and ſpecialty after *oyer*.	
70.	Plea in abatement of variance between the original and ſpecialty; and the like plea *after oyer*.	
	Plea of falſe Latin in the bond, demanding a different ſum than that mentioned in the bond, *Lill. Ent.* 5.	2. R. P. B. R. 29
	Variance between declaration and deed,	2. R. P. C. B. 2

Abatement for a variance between the writ and the count, for that he brings the writ and the count; and that he brings the writ as a knight and baronet, and counts as an eſquire, 1. *Mod. Ent.* 7.

Debt on bond dated 27th April, 2. Anne; *oyer* of the original, which was teſted 1ſt April in the ſame year; abatement, that the writ was brought before the date of the bond; replication, that the writ on which he declares was another writ, which is entered *in hæc verba*, and was teſted after the date of the bond; rejoinder by way of eſtoppel, by reaſon of *oyer*; demurrer, concluding as if her plea had been a plea in bar; and judgment for plaintiff, *Lut.* 1642.

In *debt* on bond defendant pleads, that the bond was made to the *father* deceaſed, and not to the *ſon* of that name, *Clift.* 7. In debt on bond for 800l. *oyer* and plea in abatement, for that the writ and declaration are not warranted by the bond, becauſe in the bond it is *octogentis* inſtead of *octingentis*; plaintiff confeſſes, *Br. R.* 191. *Reg. Pl.* 279. 2. *Mo. Intr.* 10. 17. 1. *Br.* 127. *Hob.* 19. *Aſht.* 5. *Her.* 5.

Between the writ and deed, 3. *Inſtr.* 39. 100. *Cl. Aſſ.* 2, 3. *Reg. pl.* 278. 281. *Aſht.* 3, 4. In plaintiff's addition, *Ra. Entr.* 459.

70. Plea

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70. Plea in abatement of variance between the writ and testament in *debt* by an *executor*.

Plea in abatement, that the writ is dated before the letters of administration, 1. *Mod. Ent.* 17. *Lut.* 8.
For variance between the writ and testament, *Cl. Aff.* 14. *Reg. Pl.* 280. 3. *Instr. Cl.* 40. 42. 2. *Mo. Intr.* 11. *Asht.* 5, 4.
Variance between original and letters of administration being omitted out of the original, *alias* D. and judgment on the view of the Court, 3. *Instr. Cl.* 44. *Mo. Intr.* 11. 1. *Lut.* 8, 9.

2. Between the Plaint and Declaration (29).

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8. Plea of variance between original writ and declaration.
9. Plea of variance between the writ and count in the *addition*.
71. Plea in abatement for variance between the plaint and declaration.

For variance between the writ and declaration, 3. *Instr. Cl.* 39. 45. *Reg. Pl.* 277. 2. *Mo. Intr.* 9. In partition, *Asht.* 4. In the name of plaintiff, *Ib.* Writ knight, and count esquire, *Her.* 3.
Between the writ and bill in B. R. 1. *Bro.* 3. 3. *Mo. Int.* 10.
Between the writ of *ex fa.* and declaration, in the name of defendant, 1. *Bro.* 4.
Between plaint and declaration, *Clif.* 20. In the *inferior* court, for variance between plaint and declaration in *debt*, *Br. R.* 1, 2. *Reg. Pl.* 282.

2. To the *Action* of the Writ.

1. Action misconceived (30).

Debt on bond, that it was made in another county, and prays, that plaintiff may be examined thereon, and *dies datus*, *Ra. Ent.* 179. Where plaintiff is examined in court, and judgment to quash the writ, *Ib.* 184.
In *attaint* prays, that writ may be quashed without cause shewn, and judgment to quash the writ, for that a former action was tried in another county, *Ib.* 91.
Audita querela in C. B. on statute merchant; plea, that Court has not cognizance thereof, 1. *And.* 227.
Original writ for chattels, and Count of one thing only, *Her.* 4.
Trespass for taking a dog, and Count for taking one dog one day and another the other, *Her.* 3.
On the *statute of Labourers*; plea, that defendant was an apprentice, and not a servant; and issue, *Ra. Ent.* 422.
In *debt*, that one of plaintiffs died before original purchased; replication, that he is alive, *Ra. Ent.* 161. *Asht.* 8. In *trespass*; and replication, that he died afterwards, *Ib.* 126. One of plaintiffs died pending the writ, and leave to get a better writ, *Her.* 16.

 Ravishment

Ravishment of ward of daughter, that daughter took baron before the writ purchased; demurrer; and judgment to answer over, *Ra. Ent.* 394.
Formedon in discender; abatement, for that it ought to be in remainder, *Her.* 463.
Formedon of a manor and chace, that chace is parcel of the manor; demurrer, *Ib.* 470.
Formedon after partition, that one had nothing in tenements at the time of the partition; and issue, *Vet. Intr.* 179.
Entry, where demandant alledged the entry by H. when entry was by W. and not by H.; and issue, *Ra. Entr.* 249. *Vet. Int.* 176.
Where J. is alledged son of W. and W. has no son called J. *Ra. Entr.* 50.
Hue and Cry; that hundred in the writ is parcel of another hundred, and not a hundred by itself, *Her.* 8.
In *trespass*, that plaintiff held lands of defendant by certain services, and defendant came to distrain for rent unpaid; and prays judgment of the writ *vi et armis*; replication, that defendant was a trespasser, and traverses the tenure, *Ra. Entr.* 680.

BEFORE CAUSE OF ACTION ACCRUED.

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55. Plea to the action of the writ, that the plaintiff sued out the original writ of attachment of privilege *before the cause of action accrued*.

63, 64, 65. Plea, that the original was sued out before the cause of action accrued; demurrer, and joinder (*see* Demurrers to Pleas, &c.); judgment of *respondeas ouster* (*see* Judgment in Abatement).

In *debt* on bond, that plaintiff sued out an original writ *before day of payment*, 1. *Bro.* 1. 3. *Pl. Gen.* 246. 3. *Instr. Cl.* 52. *Asht.* 7. *Her.* 5.; and judgment, *Br. R.* 250. Writ sued out before *day of appearance*, *Clif.* 10. In *trespass*, that plaintiff sued out writ *before day* on which trespass was done, 1. *Bro.* 4. 3. *Instr. Cl.* 54. 2. *Mo. Int.* 15. *Clif.* 19.
For that the writ of *ca. sa.* did not issue before the writ of *sci. fa.* against bail, 3. *Instr. Cl.* 53.
That writ was sued out before cause of action accrued, *Clif.* 10. 19. Confession of the plea.
Debt by *baron and feme*, that plaintiff sued out their writ before their marriage was celebrated; replication, that marriage was had before original purchased, 1. *Bro.* 4.
For that the bill is in *case*, and ought to be in *account*, 2. *Mo. Int.* 18.
For that a party is named in the writ who did not sign the indenture, *Clif.* 4.
For that the *debt* is not specified *according to the statute*, *Clif.* 7.
In *account* by the African Company, that the Company made defendant and others their receivers, who received money jointly; replication, that defendant alone received the money, and traverses, that it was received jointly, *Br. R.* 1.
For that action is laid in the county in *debt*, *Clif.* 6. That property is in the defendant, *Ib.* 107.
That after the purchase of the goods, defendant gave a bond to secure the payment of the money; replication, that he did not, *Hans.* 104.
Debt on judgment; plea in abatement, that the record was removed by writ of error into the exchequer chamber; demurrer; and judgment of *respondeas ouster*, 1. *Lut.* 601.
Plea in abatement in *formedon* by *bis petitum*, 1. *Lut.* 851.

Count

Count on *a writ of waste*; plaintiff entitles himself to the reversion by discent, defendant pleads, that his title was by devise, &c. and traverses the discent; and held well on general demurrer, 1. *Lut.* 1557.

2. Another Cause of Action depending (31).

Vol. I. Page		Precedents *in* Books *of* Practice Reporters, &c.
8.	Plea in abatement of an action of *debt on bond* in B. R. that a prior action is depending for the same cause in B. R.	
37.	Plea in abatement to declaration *qui tam on the statute of Car.* 2. *c.* 8. *against a butcher for selling live cattle*, another action pending at plaintiff's suit for the same offence.	
44.	Plea of a former suit depending for the *same* cause of action in the *same* court.	
44.	Replication of *nul tiel record* to such a plea.	
52. 64.	Plea, another action depending in C. B.	
59.	Plea to a popular action, that a prior suit is depending against *another* person for the same offence.	
72.	Plea in abatement for the *joinder* of inconsistent causes of action in one bill.	
72.	The like plea, when the causes of action depend on two several titles.	
72.	Plea in abatement, that the bill is in case, which ought to be in account.	
	Lis pendens in same court; replication, *nul tiel record*, *Lill. Ent.* 2.	2. R. P. B. R. 19
	Lis alibi pendens; and replication, *Lill. Ent.* 7.	*Ibid.* 23
	Replication of *nul tiel record* of another action depending for the same cause in the same court of B. R.	Lill. Ent. 7
	Rejoinder thereto, that there is such a record; continuance thereto; general demurrer; and joinder,	*Ibid.* 8

Plea of another action depending in C. B, 1. *Mod. Ent.* 6. *Lill. Ent.* 7. 2. *Salk.* 715. 2. *Cl. English Tutor*, 161. Special imparlance, demise of the queen.

Another action pending in the same court, 1. *Mod. Ent.* 10. 2. *Salk.* 715. *Moor*, 539. 8. *Co.* 118. 2. *Vent.* 170. 2. *Cro.* 481. *Noy*, 82. *Bird*, 122. 3. *Co.* 61.

In *debt*, that plaintiff sued out a former writ for the same debt, which is yet pending, 1. *Bro.* 6. That plaintiff impleaded defendant in the mayor's court of the city of L. in the same action, which is yet existing, and not discontinued; *nul tiel record* thereto, *Rob. Ent.* 222,

False imprisonment; defendant pleads, that plaintiff in a Term past sued defendant by that writ for an assault and imprisonment, and thereupon by his attorney complained, which is yet pending, *Bro.* 220. 2. *Mo. Intr.* 14.

On the *statute* 5. *Eliz.* to the bill first exhibited by another for the same offence, which is yet pending; replication, that the bill was first exhibited by fraud; rejoinder, that it was truly and justly exhibited; and traverses the fraud and issue, *Thomp.* 6.

Replication by *nul tiel record*, and issue; and *dies datus* to bring in the record, *Thomp.* 148. *Vid.* 187.

Information; that informer exhibited a prior information against defendant in the same court for the same offence, which is yet pending, *Br. R.* 437.

In *debt*, as to part *nil debet*, as to 16l. defendant pleads another bill pending, 3. *Instr. Cl.* 97.; and replication by covin; rejoinder, that it was truly and *justly* exhibited, *Ib.* 90. Surrejoinder, and issue on the fraud, *Vid.* 187.

Action pending for the same cause in C. B. *Clif.* 2.

Another bill pending in *trespass*, *Ib.* 8, 9. 22.

That plaintiff sued out another original for the same debt, *Cl. Ass.* 5. 3. *Instr. Cl.* 100, 101.

Debt; defendant pleads in abatement of the writ, that another writ is pending, and judgment for the same debt; and the record thereof sent by writ of error into B. R. *Rob. Ent.* 2.

Another action pending on a writ directed to the sheriff of Wilts; replication, that nothing was done on that writ, but that another writ of the same *teste* was brought, directed to the sheriff of Southampton; and defendant appeared to that writ, and on that he declares; demurrer thereto, and judgment for defendant, for that the action is brought in Middlesex, and that the plea had falsified his writ, 1. *Lut.* 33.

In *trespass* against three, plea another action pending against two of them, but nothing pleaded as to third; judgment for plaintiff to recover damages, for that the plea begins and concludes in bar, 1. *Lut.* 41.

In *assize*, that plaintiffs and others brought their writ on the statute of Forcible Entry for the same trespass; replication, that it was another; demurrer, *Ra. Ent.* 62. That plaintiff brought another writ of assize, which is yet pending; and demurrer, *Ib.* 65. *Appeal*, that plaintiff brought a former writ; and demurrer, *Co. Entr.* 59. In *attaint*, that plaintiff brought another writ; *nul tiel record* thereto, *Dyer*, 228. Debt against *administrator*, that plaintiff brought a former action against defendant, who imparled; *nul tiel record* thereto, *Her.* 2. *Ash.* 7.

Plea, that defendant was in a former Term attached to answer plaintiff of a plea *quare*, &c.; and thereupon by his attorney he declared, &c. *Co. Ent.* 50.

3. Things done after Original purchased and exhibiting Bill. (32).

Debt on bond, that plaintiff after original purchased made a release of part of the debt; replication, that defendant was bound in another bond, and released part thereof; rejoinder, that the release was for part of the debt demanded; and issue, *Pl. Gen.* 5. 320. 3. *Instr. Cl.* 94, 95. *Ra. Ent.* 160. *Asht.* 7.

That plaintiff released to defendant after suing out the writ, *Pl. Gen.* 5, 6.

That it appears by the declaration that the demise was made after exhibiting the bill, *Thomp.* 2.

In *debt*, that plaintiff received part of the debt demanded after original purchased; replication, that he sold defendant goods, for part of which plaintiff received part, and traverses, that he received part of the debt demanded, *Rob. Ent.* 3. *Reg. Pl.* 293. *Cl. Ass.* 10.

In *assize*, that plaintiff after suing out original took upon him the order of knight of the Bath; special demurrer, *Vid.* 93.

Writ of *error* pleaded in the exchequer in abatement of the writ, *Clif.* 13.

Declaration on several *assumpsits* in an action brought by feme after imparlance; defendant pleads, that *since the writ purchased* plaintiff took baron H. D.; replication, that since the purchase of the writ she did not take baron the said H.; and this, &c.; demurrer, for that plaintiff does not aver she was sole; and judgment that defendant answer over, 1. *Lut.* 1639.

4. Nonsummons,

4. Non-Summons (33).
5. Non-Tenure.
6. Sole-Tenure.

Petit cape againſt three; one ſays, that he is ſole tenant, and was hindered by *cretinum aquæ*; ſame plea by two others; replication, tenants in common, *Ra. Ent.* 270. Againſt one of a moiety; the other tenant comes at the return, and ſays, that he is ſole tenant: imparlance; replication, tenants in common, *Ib.* 271.

Treſpaſs againſt three one makes default on the *grand cape*, and counts againſt two others; one pleads *non diſſeiſivit*, the other ſole tenure and *non diſſeiſivit*; replication, that all diſſeiſed, entered, and enfeoffed ſtrangers, who took the profits; rejoinder, *non diſſeiſiverunt*, *Ra. Entr.* 272.

Non-ſummons to the return of the *grand cape*, 3. *Inſtr. Cl.* 84. 93.

Treſpaſs againſt three; one as to third part ſays, ſole tenant and *non diſſeiſivit*; two others ſay, ſole tenants and *non diſſeiſiverunt*; replication, all jointenants of the firſt third part, and tenants of the other third part, *Ra. Entr.* 273.

Formedon againſt four; one pleads, that he is ſole tenant of part, and as to reſidue all plead non-tenure; replication, all tenants in common, *Ra. Ent.* 365. *Vet. Intr.* 78.

Juris utrum againſt A. and J. who plead, that they are not tenants in common, but A. holds one acre thereof; *et ſi*, &c. *Ra. Ent.* 419.

In *formedon in diſcender*, defendant pleads to part *non-tenure*, and ſhews who is tenant to the other part; that demandant had entered; and replication to non-tenure, that the tenant was tenant, &c.; demurrer to the reſidue; judgment for the demandant, for that the laſt plea was repugnant, and alſo for that the time of the entry of demandant is not alledged, 1. *Lut.* 37.

Non-tenure in *dower*, 1. *Bro.* 205. 2. *Mo. Intr.* 16. *Ra. Ent.* 230. 232, 233. *Aſht.* 101. 258.

To part, *Rob. Ent.* 246. 1. *Bro.* 202.

Formedon, 2 *Bro.* 164. *Ra. Ent.* 440. 142.

Againſt A. and B.; A. pleads non-tenure; B. ſays, that he is ſole tenant; and vouches, *Aſht.* 325.

Of lands and rents, *Ra. Ent.* 233. 362. *Vet. Int.* 7. 363. *Co. Entr.* 325. *Vet. Intr.* 114. 3. *Br.* 200. 3. *Br.* 312.

Writ of right; non-tenure pleaded; replication, that he is tenant; iſſue, verdict, and judgment thereon, and writ of ſeiſin awarded, 1. *Bro.* 314. To part replication, and puts himſelf upon the grand aſſize, 1. *Bro.* 313.

Formedon to part of lands and rents; non-tenure to the reſidue of the lands *ne dona pas*; replication, that plaintiffs are tenants of the lands demanded, and receivers of the rents, 2. *Bro.* 164.

In *aſſize*, non-tenure; *et ſi*, &c.: plaintiff never ſeiſed; *et ſi*, &c.; no wrong done, *Rob. Ent.* 128. *Ra. Ent.* 66. One pleads non-tenure, the other vouches in a writ of *aiel* againſt two, *Her.* 60.

NON-TENURE, BY DEFENDANT (34).

See Jointenants and Tenants in Common.

In *treſpaſs*, that A. on the day of ſuing forth the writ, and long before, was ſeiſed in fee, and died pending the writ; the lands deſcended to tenant; and traverſes, that he was tenant on the day of ſuing out the writ; replication, that he was tenant, and traverſes, that he died ſeiſed pending the writ; and iſſue, *Ra. Ent.* 416.

In

In *formedon*, non-tenure; replication, that he brought another writ, to which tenant perfected his law of non-summons; another writ purchased, on which process till the essoin after view, and then leave to sue out a better writ; and that he was tenant on the day of suing forth the writ; and issue, *Ra. Ent.* 417.

Plea of non-tenure in *dower*, 1. *Brown's Ent.* 205. 2. *Mod. Intr.* 16. *Ra. Ent.* 232. *Asht.* 10. 258.

Similar plea to part, *Ra. Ent.* 233. *Vet. Ent.* 114. 3. *Brownl.* 200. *Robinson's Entries*, 246. 1. *Brown's Ent.* 202. *Ra. Ent.* 230. 233.

Similar plea in *formedon*, 3. *Brownl.* 312. 2. *Brown's Ent.* 164. *Ra. Ent.* 440. 142. *Co. Ent.* 325. 329.

Plea of non-tenure in *writ of right*; replication, that he is tenant; and issue, verdict, and judgment thereon, and writ of seisin awarded, 1. *Brown's Ent.* 314.

Similar plea to part; replication similar; and puts himself upon the grand assize, 1. *Brown's Ent.* 313.

Plea in *formedon* to part of lands and rents; non-tenure to residue of lands *ne dona pas*; replication, that they are tenants of lands demanded, and receivers of the rent, 2. *Brown's Ent.* 164. *Ra. Ent.* 363.

Plea of non-tenure in *assise*, and so, &c.; pleads never seised, and so, &c.; *nul tort*, *Robinson's Ent.* 128. *Ra. Ent.* 66.

Plea, that defendant was not tenant as of the free tenement at the time of the writ, 3. *Instr. Cl.* 83. Replication, and issue, *Cl. Ass.* 8. *Brown's V. M.* 459.

Plea by two to the return of the *grand cape*, non-tenure to the writ; the third pleads that he is sole tenant, and was never summoned, 3. *Instr. Cl.* 84. *Ra. Ent.* 281.

Plea by defendant, that tenements descended to his father, who is yet seised, 3. *Instr. Cl.* 84.

Plea of non-tenure in *formedon* in abatement after imparlance; plaintiff replies, that the tenant, before the suing out original, enfeoffed divers persons unknown by fraud, and that he could not have notice of the names of the persons against whom the writ of summons of *formedon in descender* was sued out; that tenant continually receives the issues and profits, by which by the statute, being the pernor of the profits, he ought to be adjudged tenant; demurrer, 3. *Lev. Rep.* 52. *Ra. Ent.* 311. 363.

Plea of non-tenure, shewing who is tenant, 1. *Lut.* 851. 6.

Plea in *formedon in descender*; as to part non-tenure, and shews who is tenant to the other part; that demandant had entered, &c.; replication to non tenure, that the tenant was tenant, &c.; demurrer to the residue; judgment for the demandant, for that the last plea was repugnant, and also for that no time of the entry of demandant is alledged, 1. *Lut.* 27.

Plea in *dower* against two to part separately, non-tenure, *Rob. Ent.* 267.

In *trespass*. *Ra. Ent.* 440. *Fin.* 65. Replication, that E. survived A. and S. and died and that the right remained to the demandant; and tenant on the day of the death of E. was tenant, &c. from thence until the original purchased, within a year after the death received the profits, and ought to be adjudged tenant by statute; rejoinder, that he was not tenant on the day of the death, *Ra. Ent.* 364. *Vet. Ent.* 90.

Cessavit against C. and M. of five acres of land; as to two, non-tenure; as to one C. says, that he is sole tenant; and as to two others, non-tenure; M. as to one acre pleads non-tenure; as to said two other acres says he is sole tenant; replication, that they are tenants in common, *Ra. Ent.* 111. *Co. Ent.* 224.

In *trespass* against L. and I. his wife and C. non-tenure by C.; L. and I. answer as tenants of three parts and part of a fourth part, and plead several pleas to a moiety of a moiety of another moiety and residue; replication to the three pleas; and because the demandant did not answer to the plea of non-tenure by C. demandant as to C. takes nothing by his writ, *Ra. Entr.* 275.

Trespass

Trespass against two; non-tenure with disclaimer by one; the other pleads, that he is sole tenant, and that he did not disseise, *Ra. Ent.* 276.

Trespass against two; one pleads non-tenure; the other, that he is sole tenant, and pleads to issue; and no answer to plea of non-tenure, *Co. Ent.* 219.

Plea, *ne quid juris clamant*, *Ra. Ent.* 536.

Plea, that he is not perceiver or deforceant of the rent, nor tenant of the lands from whence the rent issues, *Ra. Ent.* 440. Issue, that he is tenant and deforcer.

In *assize* of rent defendant says, that it is a rent charge issuing out of certain lands, of part of which defendant is tenant, and traverses that he is tenant of the residue; replication, that he is tenant of the entire tenements, *Ra. Ent.* 440.

In *dower*, to part non-tenure, but that the same are customary lands of the manor, and like to the other part; replication, that defendant is tenant of the tenements, and traverses that they are customary lands; and separate issues, *Ra. Ent.* 231.

SOLE TENURE (35).

Plea in *dower* against two; both plead, that he holds in severalty, and as to the residue severally plead *non tenure*; demurrer, *Robinf. Ent.* 267.

Plea in *assize*; by one, *nul tort*; by the other, that he is sole tenant, and traverses that the others have anything in the tenements; *et si, &c. nul tort*, 2. *Brown's Ent.* 42. 3. *Instr. Cl.* 93.

Plea of several tenancy in a writ of *dower*, 1. *Lut.* 11.

Plea of severalty by tenant, 1. *Brown's Ent.* 267.

Grand cape against one, and the same day given to another, who says he is sole tenant, and vouches to warranty, *Ra. Ent.* 248. Against A. and B.; A. says, that he is sole tenant, and was never summoned; same by B.; replication, that they are tenants in common, *Ib.* 271. Against A. and B.; A. makes default; B. says, that he is sole tenant, and tenders his law of non-summons; replication, tenants in common, *Ib.* 282. Demurrer, and estoppel in abatement. (*See* Demurrer.)

Plea of *estoppel*, that tender after special imparlance ought not to be pleaded, *Clift.* 17. 19. 203.

Similar plea after imparlance in abatement; defendant ought not to plead, *Ib.* 18. *Sed vide* 21. where after special imparlance defendant pleads outlawry; and replication not the same person; demurrer, and joinder.

Similar plea: *variance* pleaded after imparlance, *Id.* 20. Replication, *precludi non*, because imparlance is special, *Ib.* 23. *Thomp.* 2. 118. and 1. *Brown's Ent.* 8.

For that defendant was not tenant of the freehold at the time of the writ, 3. *Instr. Cl.* 83. Replication, and issue, *Cl. Ass.* 8. *Bro. V. M.* 459.

To the return of the *grand cape*, two plead non-tenure to the writ; a third, that he is sole tenant, and never summoned, 3. *Instr. Cl.* 84.

Plea, that lands descended to his mother, who is yet seised, 3. *Instr.* 86.

In *formedon*, non-tenure pleaded in abatement after imparlance; replication, that tenant, before suing out original, enfeoffed divers persons unknown by fraud, and that he had no notice of the names of the persons against whom to sue out his writ of *formedon in descender*; that the tenant continues to receive the issues and profits, by which by statute he ought to be adjudged pernor of the profits; demurrer by tenant, 3. *Lev. Rep.* 52.

In *dower* against two, one pleads *sole tenure* as to part, and as to residue they severally plead *non-tenure*; demurrer, *Rob. Entr.* 267.

In *assize*, plea by one *nul tort*, by another that he is *sole tenant*, and traverses that others had anything in the tenements; *et si, &c. nul tort*, 2. *Bro.* 42. 3. *Instr. Cl.* 93.

In *dower*, plea of several tenancy, 1. *Lut.* 11.

Plea

Plea of non-tenure, ſhewing who is tenant, *Ib.* 851—6. Defendant pleads, that he is tenant in ſeveralty, 1. *Bro.* 267.

Non-tenure; replication, that E. ſurvived A. and S. and died; the rights remained to the demandant; and the tenant, on the day of the death of E. was tenant, and from thence until the original purchaſed within a year after the death received the rents; in which caſe he ought to be adjudged tenant by the ſtatute; rejoinder, that he was not tenant on the day of the death, *Ra. Ent.* 564. *Vet. Ent.* 90.

Ceſſavit, non-tenure; replication, that defendant made a feoffment to perſons unknown, and took the profits; rejoinder, that he did not take the profits, *Ra. Ent.* 111.

Ceſſavit againſt C. and M. of five acres of land; as to two acres, non-tenure; as to one acre C. ſays, that he is ſole tenant, and as to two other acres non-tenure; M. as to one acre pleads non-tenure, and as to two other acres ſays he is ſole tenant; replication, that they are tenants in common, *Ib.*

Treſpaſs againſt L. and J. his wife and C.; non-tenure by C.; L. and J. anſwer as tenants of three parts and part of fourth part, and plead ſeveral pleas to the moiety of the moiety of the other moiety and reſidue; replication to thoſe three pleas; and becauſe demandant does not anſwer to the plea of the aforeſaid C. of non-tenure, demandant as to the ſaid C. takes nothing by his writ, *Ra. Entr.* 275.

Pleas in Abatement.

Puis Darrein Continuance (36).

Death, Excommunication, Coverture.

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15. *Excommunication* of plaintiff pleaded after the laſt continuance *in the county court.*

15. Plea to an *information* in the exchequer, that one of the defendants is dead ſince the laſt continuance. (*See* Criminal Diviſion).

74, 75. Plea, that plaintiff died *puis darrein continuance*; replication thereto, and iſſue.

An excommunication pleaded in abatement of the writ after the laſt continuance, 1. *Mod. Ent.* 21.

That plaintiff died after the laſt continuance, *Thomp.* 3.

That plaintiff died after the laſt continuance; replication by attorney, that he is alive; and iſſue, 1. *Bro.* 3. 8. *Pl. Gen.* 7. *Br. R.* 199. *Cl. Aſſ.* 6, 7. 3. *Inſtr. Cl.* 64. *Reg. pl.* 293. In B. R. *Thomp.* 3. 171. *Ra. Entr.* 108. *Vet. Int.* 84. *Aſh.* 8. 384.

Death of one defendant pleaded; the other prays imparlance; and pleads, *Hanſ.* 112.

In *debt* againſt two *adminiſtrators*, that one died after the laſt continuance, *Br. R.* 175. In *formedon*, that one of tenants died, after view and after the laſt continuance; and leave given to purchaſe a better writ, *Pl. Gen.* 3.

That plaintiff became *covert* after the laſt continuance; replication, that ſhe is ſole; and traverſe, *Pl. Gen.* 4. And in *attaint*, *Ib.* 134. After laſt continuance by bill, *Thomp.* 1.

That plaintiff after the laſt continuance of writ of *ſcire facias* was covert; demurrer ſpecial; and judgment of *reſpondeas ouſter*, *Vid.* 77.

In

In *ejectment*, that plaintiff entered into the lands after the last continuance, *Her.* 5. *Pl. Gen.* 1. That demandant, &c. *Ra. Ent.* 30. 107. 365. *Vet. Ent.* 59. In *dower*, that demandant after verdict, and before judgment, entered into the lands, *Ib.* . 3. *Instr. Cl.* 96.

That after last continuance plaintiff received part, 1. *Bro.* 8. *Thomp.* 2. *Hans.* 102. *Ra. Ent.* 160. *Vet. Intr.* 50.

That plaintiff was outlawed after the last continuance, *Clif.* 3.

Plea by defendant at the assizes, an award made since the last continuance; replication, *nul award*; and issue, *Br. R.* 181.

Outlawry of plaintiff after the last continuance, *Clif.* 3.

Death of one of tenants after last continuance, *Ra. Entr.* 107. After essoin on summons, *Ib.* In *attaint* jury plead, that defendant died after the last continuance; demurrer, *Ra. Ent.* 92.

In *attaint*, that one of plaintiffs took *baron* after the last continuance: replication, that she is sole, *Ib.* 91. *Vet. Int.* 62.

In *dower*, that demandant after the last continuance entered into part of the lands, and occupied them; replication, that she cohabited there with a man, and remained there with him as tenant at will; and traverses the entry; and issue, *Ra. Entr.* 234. Plaint in dower that she remained there till Friday after fifteen days of Trinity to transact business, before which day a disseisee re-entered upon the lands; replication, that he did not disseise, *Ib.* 232.

Formedon; that king Edward the Fourth being seised granted lands with a condition, which descended on Queen Elizabeth, who granted the commission; and that after the last continuance, the title found for the queen, *Her.* 441.

That plaintiff was made a knight after the last continuance, *Ra. Ent.* 106. *Vet. Intr.* 50.

2. *Quare Impedit* (37).

Plea in abatement to a *quare impedit*, that there is no such writ in the Register of Writs, 1. *Mod. Ent.* 11. *Lut.* 2.

Abatement in *quare impedit*, that the patron is not named in the writ with the parson, 1. *Mod. Ent.* 6. 2. *Lut.* 1088.

Abatement of the original writ in *quare impedit*, 1. *Mod.* 7.

In *quare non admisit* defendant pleads, that the word (*exclusias*) has no certain signification, *Br. R.* 1. *Reg. Pl.* 191.

In *quare impedit* by *baron and feme*, that wife died after the last continuance without issue; demurrer, *Wi. Ent.* 771.

Quare impedit on statute of simony; abatement, for that the patron is not named in the writ with defendant; demurrer; and *nolle prosequi* by Attorney General, *Br. R.* 410. 3. *Lev. Rep.* 15. *Clif.* 23.

Quare impedit against the bishop and clerk, who plead, that the plaintiff *brought another writ* against the bishop only, which is yet pending; replication, that plaintiff, after suing former writ, presented his clerk, whom bishop refused; and traverses, the *hindrance* in the former and the present writ is one and the same; demurrer, *Wi. Ent.* 783.

Quare impedit; plea, that plaintiff is a *papist recusant convict, per quod* he is *disabled* to present by 3. Jac.; demurrer, *Wi. Ent.* 752.

Quare impedit for disturbance in the life of testator concludes in now staying execution of the will; and on plea in abatement, for this cause the writ was abated on demurrer, 1. *Lut.* 3.

Abatement in *quare impedit*, that the patron was not named in the writ brought by the king on a title arising by simony, 2. *Lut.* 1088.

Quare impedit of an abbey against R. C. a canon; plea, two defendants of the same name; senior says, that he is the abbot, and prays judgment of the writ, for that he

Outlawry pleaded in abatement of the writ of *scire facias*, *Clif.* 9.

To debt on *scire facias* against administrator, defendant pleads an outlawry not reversed against intestate, and *plene administravit*; demurrer, and rejoinder, *Br. R.* 218.

Scire facias against terre-tenants, who plead in abatement, that one of the tenants was not summoned, on which the *scire facias* was awarded against him; and on the *scire facias* returned, *respondeas ouster*, 2. *Sand.* 8. Other tenants non-summons, 2. *Vent.* 103.

Scire facias, because there were only fourteen days between *teste* and the return of *scire facias*; demurrer thereto; and plea held good, 1. *Lut.* 25.

Scire facias against terre-tenants; they plead non-tenure specially, viz. that R. and S. seised in fee, demised to J. C. for years, who demised to defendant at will; and traverses the freehold, *Thes. Br.* 225. Demurrer.

ACCOUNT—PLEADINGS IN.

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At Common Law.

Against 1. Bailiff.
2. Guardian in Socage. } (1).
3. Receiver.

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

Against a *bailiff* by the hands of the plaintiff, *Lill. Ent.* 467. — 1. R. P. B. R. 544

Declaration in account by the present *churchwarden* against the late churchwarden, *Lill. Ent.* 12. - - 2. R. P. B. R. 43

Plea in abatement thereto, that another was churchwarden with defendant who is not named (*See ante* ABATEMENT).

Declaration in account against *guardian* and bailiff, *Lill. Ent.* 13. - - - - - - - *Ibid.* 44.

Declaration in account as *bailiff* of goods and chattels; plea *ne unques balliens*, - - - - *Ibid.* 46

Declaration in an action of account against defendant, as being the *surviving* bailiff of the plaintiff: 1st, Plea in bar, the defendant protesting that he never was the bailiff of the plaintiff to render an account to him, but that J. S. was his sole bailiff; traverses without this, that he, the defendant, and J. S. were the bailiffs of the plaintiff, as he hath alledged in his declaration; second plea in bar, the statute of Limitations; third, that defendant was governor of Fort St. George; and that J. S had the sole management of selling the merchandizes consigned by the plaintiff. Replication to the first plea takes issue upon the traverse; issue to the second plea; to the third plea, as to parcel of the goods avers, that the management of the consignment was left to J. S by agreement between the defendant and J. S as joint factors, without the consent of the plaintiffs; and this he is ready to verify. The like replication to the third plea as to the residue of the goods. Rejoinder to the replication to the second plea, that the account did not concern trade and merchandize; and thereupon the second issue is joined; rejoinder to the replication to the third plea; as to parcel the defendant says, that upon delivery over of the goods to J. S. all concern whatsoever of the defendant in the care, trust, and management of the goods ceased, and was at end. The like rejoinder to the replication to the third plea as to the residue of the goods. Surrejoinder as to parcel of the goods; the plaintiff says, that upon delivery over of the goods to J. S. all concern of the defendant in the care, trust, and management of the goods did not cease, nor was at an end; and thereupon the third issue is joined. The like surrejoinder as to the residue of the goods; and thereupon the fourth issue is joined. Verdict; and judgment *quod computet*. Plea before auditors; demurrer to that plea; joinder in demurrer; continuances by *curia advisare vult*; final judgment for the plaintiff; satisfaction acknowledged, - - - - - - 2. Wils. Rep. 74—94

Declaration in account by present against the late *churchwardens*; plea in abatement thereto, another was churchwar-

den with defendant not named; traversing, that defendant was sole churchwarden; special demurrer thereto for uncertainty in the plea, and containing in it a negative pregnant, and for making *full defence*, and traversing matter not traversable, - - - - - Lill. Ent. 11

Against a bailiff who had the care of divers goods of plaintiffs, to render an account thereof, - - - - - - Pl. Ass. 36

Declaration in account against a bailiff by the hands of the plaintiff of goods, &c. to merchandize and make profit of; bar, *ballivus non*; judgment, that defendant wage his law; rule for a nonsuit, - - - - - Lill. Ent. 467.

Account against bailiff, 1. *Mod. Ent.* 42. *Lut.* 58. Bar, that he hath fully accounted; replication, that he hath not accounted; and issue, 1. *Mod. Ent.* 43.

Count by *executrix* of deceased joint merchant and the surviving joint merchant against the bailiff, &c. at a place certain; plea, an award by umpire; and judgment for the plaintiffs, for that plaintiffs have no means to compel the execution of it, 1. *Lut.* 56.

Account against a bailiff for one hundred and thirty-two bushels of corn; plea, *plene computavit*; verdict for the plaintiff; judgment to account; *capias* awarded against defendant; auditors assigned; bail for defendant; judgment for plaintiff to recover according to the value of the corn alledged in the count, *Thes. Br.* 58. 63.

Against a bailiff to render an account, *Thomp.* 96. *Rob. Ent.* 4. On an *insimul computasset*, *Ib.* 5. 120, 121.; and like declaration with satisfaction as to part, *Ib.*

By the present *churchwardens* against late churchwarden for money and goods received, *Br. Red.* 5.

Against four defendants, where two are outlawed, *Rob. Ent.* 5.

By surviving *administrator with will annexed* against bailiff of goods and receiver of foreign money, *Vid. Ent.* 75. *Rob. Ent.* 121.

By *executor* against bailiff, *Vid. Ent.* 76. Against bailiff *receiver* or factor in parts beyond the seas, *Rob. Ent.* 4.

Count against bailiff having *administration* of divers goods; and a similar count in an *inferior* court, *Rob. Ent.* 123.

Against bailiff having the care and *administration* of divers goods to sell and merchandize, *Rob. Ent.* 123. 2. *Br. Ent.* 38. *Br. Red.* 9. 11. *Cl. Ass.* 59. *Re. Dec.* 3.

By infant by *prochein ami* against bailiff, 1. *Br.* 114. 118.

Against the bailiff of office of constable of the castle, and issues and profits thence arising, as well of that office as of keeper of all the forests, parks, warrens, and other place, to the same office belonging, through his hands, &c. to merchandize, and profit, therefrom to be made for plaintiff, *Br. Red.* 3. 1. *Br.* 118.

Against bailiff of goods to trade for plaintiff, *Br. Red.* 10.

Against bailiff of a manor, *Ra. Ent.* 17. Of lands, *Ib.* *Co. Ent.* 46. Of dove-cotes, 2. *Cro.* 491. Of mills, *Asht.* 104. Of a hundred and liberty, 1. *Br.* 52. Of lands, cattle, and goods, *Ra. Entr.* 17. *Kelw.* 153. *Vet. Int.* 22. 26. Against bailiff of a park, having care of the kids, 10. *Herne*, 7. 6.

By husband and wife against bailiff of messuages and lands of the wife whilst sole, 3. *Br.* 5.

By executor against bailiff, *Asht.* 104.

Against *bailiff* and receiver having the care and management of divers quantities of coals, 1. *Mod. Ent.* 49.

Againſt bailiff and *receiver* having care and management of all the lands and tenements, rents, profits, eſtate, &c. of plaintiff, as well as perſonal, 1. *Mod. Ent.* 49.

Againſt bailiff of houſes and chattels, and receiver of money to the joint uſe of plaintiff and defendant, *Ra. Ent.* 18. 17. *Co. Ent.* 47.

Againſt the occupier of corn to joint uſe, 1. *Br.* 51. Of divers goods, 1. *Br.* 52. 2. *Cro.* 410. Againſt bailiff of a rectory, &c. 3. *Br.* 6. Againſt bailiff and receiver of manor and goods for a time certain, *Her.* 11. By *baron and feme* againſt bailiff of houſes and lands and receiver of wife whilſt ſole, *Co. Ent.* 47. *Reg.* 135. 1. *Br.* 51. By a prioreſs againſt bailiff and receiver of her predeceſſor, *Reg.* 135. By a warden of an houſekeeper againſt bailiff and receiver of plaintiff's predeceſſor, *Reg.* 135.

By the *executor* of leſſee for a year of a manor againſt one of the tenants of a manor elected at a court to be ſteward of the manor by cuſtom, *Ra. Ent.* 20. Againſt bailiff of the office of conſtable of a caſtle and keeper of a foreſt thereto belonging, and receiver of money, 1. *Br.* 46.

Againſt a bailiff of an office and receiver of monies, 1. *Mod. Ent.* 50.

Againſt bailiff and receiver of monies; plea, *Ib.* 50, 51.

Againſt bailiff of a hundred, *Ib.* 51.

2. Againſt Guardian in Socage.

Account againſt a guardian in ſocage, *Rob. Ent.* 5. 1. *Br.* 114. Of a manor, *Ra. Ent.* 21. *Vet. Int.* 62. Of lands, *Ra. Ent.* 21. *Co. Ent.* 47. *Reg.* 136. *T. N. B. R.* 118. *Vet. N. B. R.* 58.

Againſt guardian in ſocage, to account for profits during infancy and guardianſhip, 1. *Mod. Ent.* 52. *Lilly,* 13. 1. *Vent.* 105. 1. *Salk.* 9.

Plea in bar, that defendant had the cuſtody for a certain time, and rendered an account to plaintiff when he came of full age, who demiſed to defendant parcel of the manor for the balance of the account had; traverſes, that he had the guardianſhip before or at the day; replication, that he did not account, *Ra. Ent.* 21.

That defendant had not the guardianſhip of the manor, *Ib.*

3. Againſt a Receiver.

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Declaration in account by one partner againſt two others not acting with him, but *receiving* the whole profits, -	Pl. Aſſ. 35

Account by *baron and feme* and a third perſon againſt a receiver of money belonging to baron and feme and a third perſon received of J. W.; plea, *ne unques receiver*, and iſſue; ſpecial verdict; auditors aſſigned; defendant prays to be diſcharged, and ſays, that he expended one hundred pounds aforeſaid in maintenance, &c. of the *feme* of the plaintiff and the third perſon for the ſpace of eight year; and iſſue; verdict for plaintiff; defendant committed in execution; and after error is brought, and judgment affirmed, 1. *Lut.* 47.

Count againſt receiver by *other* hands, *Win. Ent.* 1. 6. *Robinſ. Ent.* 122. By the hands of *plaintiff* and *another*, *Br. Red.* 2. Againſt a bailiff and receiver, *Thomp.* 96. *Cl. Aſſ.* 51, 53, 54. *Ra. Dec.* 4.

Againſt

Againſt a receiver under agreement to employ for the joint uſe of plaintiff, *Rob. Ent* 119. For rent arrear, *Ib.* 120. For money, to render an account of it, *Ib.* 120

Account againſt an *attorney, Ib.* 120. Againſt a receiver by bill for money received, *Ib.* 120. *Wi. Ent.* 1. Againſt receiver of money for the joint uſe of plaintiff and defendant, 1. *Br.* 116. *Ra. Ent.* 19. *Reg.* 135, 136. *H.* 10. *E.* 3. 19. 3. *Br.* 7. Same by *executor, Reg.* 135. *F. N. B. R.* 117. Same by a merchant, *Reg.* 135. *F. N. B. R.* 117. 1. *Inſt* 172. Againſt occupier of corn for joint uſe, *Br. Red.* 6. For divers goods and chattels between plaintiff and defendant to joint uſe, to be equally divided, *Br. Red.* 6. Againſt receiver of monies to be paid ſervants for ſalaries, *Br. Red.* 7.

Againſt a receiver of a ſum of money for a day, 3. *Br.* 1. 3. *Aſt.* 104. Of ſeveral ſums of money for a time, *Ra. Ent.* 19. *Vet. Int.* 21. 1. *Br.* 45. *Her.* 11. 13. Of ſeveral ſums at different times, 3. *Br.* 4.

Againſt an *attorney* by [illegible] for money received at one time, *Her.* 12. Againſt a receiver for a time by the hands of M.; ten pounds by the hands of R. by appointment of M.; ſix pounds, &c. *Her.* 13. Againſt a receiver, two hundred pounds for a time, viz. on a day certain; twenty pounds at another day; forty pounds, &c. *H.* 6. 33. Of money received to pay ſervants their wages, 1. *Br.* 52. Of money ariſing from the hire of part of a ſhip, *Townſ. Judg.* 135. By the treaſurer of a college, for the profits ariſing from the manors belonging to the treaſury; againſt a *woman receiver*, 22. *E.* 3. 17. By *baron and feme, Reg.* 135. By a prior, *Ib.* By the maſter of a houſe, *Ib.* By the *corporation* of a city, *Ib.* 136. Againſt the late *churchwarden*, for money received by them, 1. *Br.* 50. By *executor* againſt receiver for a time, *Co. Ent.* 47. By *baron and feme executrix*, for money received on a day certain, *Ra. Ent.* 20. By the abbot and another *executor, Reg.* 135. By *executor* and huſband and wife *co-executors, Ib.* 136. Of money received by the hands of the late wife of L. W. deceaſed, *Aſht.* 105.

Declaration in account by preſent *churchwardens* againſt the then late churchwardens; imparlance; plea, that they were never choſen churchwardens; account before auditors, &c. 1. *Mod. Ent.* 53.

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

Account by the preſent churchwarden againſt the late churchwarden, - - - - - - - 2. R. P. B. R. 49

Account for monies received by the hands of divers perſons.—By one *churchwarden* againſt another, 1. *Mod. Ent.* 48. By *feme ſole* by guardian againſt receiver of the profits of part of a neife that belonged to plaintiff and his brother deceaſed, *Rob. Ent.* 119.

Account againſt defendant as bailiff of a liberty and franchiſe of a hundred and half the hundred of C. and the manors and tenements of plaintiff in B. &c. for the time, and as keeper and adminiſtrator of the execution and return of all writs, warrants, and precepts, and perceiver and *receiver* of all fees, advantages, and profits, by reaſon of the execution and return of them within the hundred, and within manors and tenements, to the uſe of plaintiff, and from the profits thereon to be made, and render an account, *Brown. Red.* 7.

Againſt receiver of a ſum of money on a certain day, *Brownl. Red.* 7. *Winch Ent.* 6. Similar count by plaintiff by the hands of J. C. *Brownl. Red.* 8.

Againſt receiver of ſeveral ſums of money for plaintiff by hands of J. C. and M. W. *Brownl. Red.* 8. *Cl. Aſſ.* 54.

By the Royal African Company againſt one as bailiff and receiver of their Royal Society in London, *Brownl. Red.* 1.

Againſt

Againſt bailiff and receiver having the care and adminiſtration of all the lands and tenements, rents and profits, of his whole eſtate of plaintiff, as well real as perſonal, *Read's Dec.* 1.

Againſt bailiff and receiver of goods and money received by the hands of R. to trade, 1. *Brown. Ent.* 117.

Againſt defendant to render an account, and to pay the moiety of money received by the defendant, 1. *Sanders,* 45.

II. Since the Statute,

By one Executor or Adminiſtrator againſt Another. (2).

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Declaration in account by *executor* of *tenant in common* for the iſſues and profits of three undivided fourth parts againſt defendant as bailiff; 2d, in his own right, - -	2. R. P. B. R. 86
Declaration by *adminiſtratrix* againſt defendant as bailiff of her huſband of the moiety of premiſes, - - - -	*Ibid.* 88
Declaration in account by *executor* of a merchant againſt his factor, *Lill. Ent.* 13. - - - -	*Ibid.* 43

By one Jointenant or Tenant in Common againſt Another. (3).

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81. Declaration in account by *huſband and wife* againſt their tenant in common as her bailiff whilſt ſhe was ſole, for rent of an eſtate; 2d Count, to render an account of what defendant received more than his reaſonable ſhare of the profits ſince the marriage.

82. Declaration in account by one jointenant againſt two others as his bailiffs, for his ſhare of the rents of an eſtate under the ſtatute 4. Anne, c. 16. ſ. 27.

83. Declaration in exchequer againſt bailiff in account by one tenant in common againſt another.

83. Declaration in B.R. in account by one jointenant againſt another, for receiving more than his ſhare of the rents of an eſtate; ſee ſt. Anne, c. 16. ſ. 17.

84. Declaration in account by plaintiff an *infant* by *prochein ami* againſt defendant, for not accounting for the rents of lands which were held as tenants in common; 2d

Count,

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Count, as tenant in common of two undivided five parts in other premises; 3d Count, nearly the same; 4th Count, of one undivided fifth part of other premises.
Declaration by *husband and wife* against a tenant in common with the wife of a copyhold estate.
47. Declaration against a bailiff for an account of divers goods and merchandizes; plea, that the goods were destroyed by fire; replication, that the goods were not destroyed by fire.
89. Declaration by *infant* by guardian against defendant as bailiff of moiety of the premises.
89. Action of account by one jointenant against another, for money received by letting a mare to hire.

III. Pleas in Account.

1. By Bailiff.

1. *Ne unques Ballivus.*
2. *Ne Receptor.*
3. *Plene Computavit.*

} (4).

Plea, was not bailiff of houses and lands, *Co. Ent.* 46. 3. *Br.* 6. Was not bailiff of houses, lands, and goods, nor receiver of the money, *Ra. Ent.* 18, *Co. Ent.* 47. 3. *Br.* 7. Was not bailiff of houses, nor administrator of goods, *Vet. Intr.* 223. As to being bailiff of houses and lands, was not bailiff; as to money received, was not receiver, *Her.* 12. *Ra. Ent.* 7. 18. *Vet. Int.* 21. As to bailiff of houses and goods, that a discourse was had between plaintiff and defendant, and not being able to agree, defendant demised the houses and sold the goods to him; and traverse, that he was bailiff; as to the money, he received it lawfully through plaintiff's hands on that day; as to the other money received, he did not receive it, *Ra. Ent.* 17.

As to houses and part of the goods, was not bailiff; as to *part* of the money, was not receiver; as to residue of goods and money, *plene computavit* on a certain day; and traverses, that he was bailiff or receiver afterwards; replication, that he was bailiff and receiver; and traverses, that he accounted, *Ra. Ent.* 18.

Defendant confesses himself to be plaintiff's bailiff, and to have the care and management of the goods in the declaration mentioned; judgment to account, and account made before auditors, *Cl. Ass.* 58, 59, 60, &c.

Never was bailiff, *Hans.* 83. Never was bailiff for part of the time; *plene computavit* for the residue, *Cl. Ass.* 123.

2. By Receiver.

1. *Ne unques Receiver.*
2. *Plene Computavit.*

} (5).

Never was receiver of the money for a time, *Ra. Ent. Vet. Int.* 21. 125. Same for a day, *Ra. Ent.* 19. Never receiver of money to the joint use, *Ib.* 1. *Br.* 7. That defendant was plaintiff's bailiff, and on that account received the money; and traverses, that he was receiver to render an account, *Ib.* 45. That defendant

executor

executor of M. received the money of the late wife of M. to perform her will; and traverses, that he was receiver to plaintiff, *Asht.* 105. Plea by defendant in account against receiver after *per legem*, and essoin thereon; *ne unques receiver*, *Townshend's Judgments*, 17. *Rob. Ent.* 120. *Wi. Ent.* 7.

Count against J. D. receiver of money by the hands of A. R. knight; defendant pleads, *ne unques receiver*; and the jury find specially, that R. was indebted to H. in two hundred pounds; that H. appointed D. to receive it; R. required D. to borrow for him two hundred pounds of one A. to pay to H. and D. did, and R. became bound to I. for the said two hundred pounds; after D. appoints his feme to pay to H. the said two hundred pounds so borrowed; and upon the receipt by the hands of R. the jury doubt, and judgment against D. *Winch. Ent.* 6.

Plea, *ne unques receiver*, and judgment against defendant by *nihil dicit* to account before auditors assigned by the Court; several issues on this account; and demurrer to one demand; and *nil dicit* on that, and confession to four others; jury find, that defendant had disbursed seventy-eight pounds, that is, eighteen pounds more than plaintiff demands by his account; and so plaintiff had no cause of action. *Winch. Ent.* 1.

Ne unques receiver to an account rendered, *Cl. Ass.* 79. *Hans.* 165.

2. *Plene Computavit*, &c. Payment and Delivery of Money received.

By receiver, that he had fully accounted to plaintiff, *Ra. Entr.* 20. *Asht.* 106.

By the late churchwardens, that they had fully accounted with plaintiff as they ought, 1. *Br.* 50.

That defendant was a *common carrier*, and received money to be *paid* to J. to whom defendant paid it, 3. *Br.* 3.

For several sums of money received at several times: as to money received on the first day, that plaintiff and one M. were partners in merchandize, &c. and that defendant received the money to be paid to M. to whom defendant paid it; same plea as to the monies received after; replication, did not pay, 3. *Br.* 4.

That I. by whose hands the money is alledged to have been received, delivered the money to defendant to deliver to testator, to whom defendant delivered it; replication, that he did not deliver, *Ra. Ent.* 20. Same plea; replication, that defendant received money to trade with; and traverse, that I. delivered the money to be delivered to W. *Ra. Ent.* 20. *Vet. Intr.* 26.

As to four pounds received fully accounted with plaintiff; as to four pounds residue was not receiver, *Ra. Ent.* 20. As to four pieces of cloth was not receiver; as to four pieces residue fully accounted, *Ib.*

As to part of the money received, *praut*, *&c.* he was not receiver; and as to the rest, that plaintiff was indebted to defendant, and desired him to receive money in part satisfaction; and traverse, that he received it to render an account, *Ra. Ent.* 20.

As to part of the money received, that on such a day fully accounted before auditors; and traverses, that he was receiver afterwards; as to the residue of the money received, that he is ready to account; replication, that defendant, after that day, received all the money mentioned in the declaration, *Ra. Ent.* 19. *Vet. Int.* 126.

As to all the monies received before that day, *plene computavit*; as to all received afterwards, never was receiver, *Ra. Ent.* 20. 1. *Br.* 53.

Plea, rendered a full account before auditors; and demurrer, *Vid.* 78. Plea, after account made paid such a sum, *Hans.* 105. Plea confesses and avoids, that he rendered a final account, *Ib.* Plea, no such account, *Pl. Gen.* 212.

Plea, that defendant, as late churchwarden, fully accounted with plaintiff, late churchwarden; and issue, *Br. Red.* 5. *Plene computavit*, *Cl. Ass.* 115. Replication, and issue; bar by *plene computavit*, *Cl. Ass.* 52. *Rob. Ent.* 152. *Pl. Gen.* 213.

3. Plea

3. Pleas before Auditors of Discharge and Allowance, &c.
1. Delivery of Goods.
2. Payment of Money ; and } (6).
3. *Ne unques Ballivus ne Receptor.*

That defendant delivered to plaintiff the money by the hands ; replication, that he did not deliver, *Ra. Ent.* 15. *Vet. Intr.* 125. That plaintiff paid the money to plaintiff ; replication, did not pay, *Ra. Ent.* 16. 1. *Br.* 49. That defendant paid ten pounds, and allowance made for that sum, *Ib.* Replication, did not pay, 3. *Br.* 2. That defendant delivered to plaintiff goods by way of payment ; replication, did not deliver, *Ra. Ent.* 15. *Vet. Intr.* 25. That defendant paid ten pounds for goods which were delivered as payment ; replication, did not deliver, *Ra. Ent.* 15. That defendant paid twenty pounds *pro duobus lastis* of salmon delivered to plaintiff by way of payment ; *allowance unius lasti* thereof to plaintiff, and as to the other, that he did not deliver, *Ib.* That defendant paid money for the carriage of wool ; allowance thereof to plaintiff, *Ib.* That defendant sold goods received from divers persons residing abroad for divers sums of money, with which he charges himself, and prays a further day to discharge himself therefrom, *Ib.* That defendant paid money for the duties of goods abroad ; and because it appears to the auditors that this matter is insufficient to entitle defendant to allowance, defendant for that part is in arrear, *Ib.* That one I. is indebted to plaintiff in forty pounds for a bill, and for parcels of goods sold ; the same is disallowed, *Ib.* That one L. is indebted to plaintiff for part of the goods sold ; disallowed, *Ra. Ent.* 16. That plaintiff agreed with defendant *de fullatione pannorum* ; replication, no such agreement ; for plea, defendant did not deliver to plaintiff *pannum fullatum*, *Vet. Int.* 125.

Defendant prays allowance for the annual herbage and pasture of plaintiff's cattle, for board by the month for a year, for clothes and other necessaries bought for plaintiff, for the profits of an acre of land occupied by plaintiff for a year, for hay, and money paid for tithes, and in respect of homage ; auditors allow part, and disallow the rest, *Co. Ent.* 47.

Defendant convicted in thirty pounds, twenty pounds, and thirty-three pounds ; plea in bar, payment of twenty pounds to P. and ten pounds to R. by plaintiff's order ; as to forty shillings, parcel of the said twenty pounds, paid to H. by appointment of plaintiff ; as to eighteen pounds, residue thereof, bar, that defendant received them of W. to be paid to plaintiff's use, and that the said plaintiff ordered defendant to pay to S. ; and same of thirty-three pounds ; demurrer as to the whole but forty ; and to that sum replication, that defendant did not pay them to the said H. *Her.* 16.

Plea, did not account before auditors ; and issue on that, *Hans.* 104. After account paid the sum, *Ib.* 214.

Plea, *ne unques son bailiff*, 2. *Brown's Ent.* 58. Never was bailiff, *Cl. Ass.* 83. Similar, *Pl. Gen.* 212.

Plea, was not bailiff of manors, nor manager of profits, nor receiver of the money, 1. *Brown.* 166. Never was bailiff, *Cl. Ass.* 82.

Plea, *ne unques bailiff* nor receiver ; and judgment on that, *Vidian*, 76. ; and issue, *Pl. Gen.* 112. *Robins. Ent.* 115. *Hans.* 105.

Plea to count by *baron and feme* against bailiff of lands and tenements and receiver of rents and profits thereof, that he was not bailiff, nor had the care of lands and tenements, nor received profits thereof, *Brownl. Red.* 9. *Ne unques receiver* to account rendered, *Cl. Ass.* 79. *Pl. Gen.* 212. *Robinson's Ent.* 120. Never bailiff to plaintiff, nor had the care, &c. *Robins. Ent.* 4. 1. *Brown.* 114.

Plea,

Plea, that defendant never bailiff to teſtator, nor care of goods and chattels in the ſhip never was committed to him to trade for their joint uſe, &c. nor receiver of ſaid money by the hands of R. and W. to trade and to make a common profit and to render an account, *Robinſ. Ent.* 5.

Plea, that defendant was bailiff of plaintiff, and received money; and traverſes, that he was receiver to render an account; replication, that defendant was receiver *prout, &c.*; and iſſue, *Brown. Red.* 2, 3.

Ne unques Bailiff or Receiver, and *Plene Computavit.*

Plea in bar, that defendant fully accounted with plaintiff for goods, and merchandizes, and money, 1. *Brown.* 117.

Plea to parcel, *plene computavit*; to reſidue, *ne unques receiver, Robinſ. Ent.* 122.

Plea to part, *plene computavit*; to reſidue, *non ſum informatus*; replication and iſſue to *non computavit, Brownl. Red.* 6. *Cl. Aſſ.* 57. *Plene computavit* to part; to reſidue, *ne unques receiver, &c. Sanders,* 105. As to part of the time, never bailiff; as to the reſidue of time, *plene computavit, Read's Dec.* 2, 3.; and iſſue, *Cl. Aſſ.* 123, 124.

Plea to count againſt joint occupier of goods and chattels *uncore priſt* to render an account, *Brownl. Red.* 6.

Plea, *plene computavit* for part, confeſſion for the other part, and never was receiver for the reſidue, *Cl. Aſſ.* 56. Replication, *non computavit*; and iſſue; judgment that defendant account, *Ib.* 57. *Pl. Gen.* 214.

Plea, that defendant was plaintiff's receiver at another time than in the count mentioned, and that for that time he accounted before auditors; and traverſes the time in the count; replication maintains the count; and iſſue, *Brownl. Red.* 7.

Plea to count againſt defendant as receiver of one ſum on one day for plaintiff by the hands of J. C. proteſting, that he never was receiver; for plea, that defendant was a common carrier, and received money to pay J. to whom defendant paid; and iſſue, *Brownl. Red.* 8.

Replication, proteſting, did not receive; for plea, that defendant did not pay, &c. as in the plea he alledges; rejoinder, that he did pay; and iſſue, *Cl. Aſſ.* 55.

Account for goods which ſhould come to defendant's hands; plea, that no goods came to his hands, 1 *Sanders,* 100. Replication, that one ſilver chalice came.

Plea, that he expended the money in repairs and other neceſſary charges, 1. *Sanders,* 45.

Plea, received goods to trade, which were feloniouſly ſtolen from defendant; replication, they were not ſtolen; and iſſue, *Robinſ. Ent.* 123.

Plea, money received to carry from place to place was ſtolen, *Ib.* 119.

Plea confeſſes that he was receiver, but that he rendered a final account in the preſence of A. and B. *Robinſon's Ent.* 123. *Hanſ.* 105.

Plea, that defendant received one hundred pounds to trade, and made a juſt account in writing, for which plaintiff gained ſixty-two pounds *per cent.* which defendant offered to pay with *uncore priſt, Robinſ. Ent.* 119.

Account for two ſums of money received two ſeveral days; as to money received on the firſt day, that plaintiff and one M. were partners in trade, and that he received the money to pay to ſaid M. to whom defendant paid it; ſimilar plea to the money received the ſecond day; replication, proteſting, that plaintiff and M. were not partners; for plea, that defendant did not pay, *Brownl. Red.* 8. Rejoinder, and iſſue on payment.

Count by merchant againſt his factor as bailiff of goods to trade for plaintiff; plea, by cuſtom of merchants, adventure with profit and loſs; replication traverſes the cuſtom; rejoinder, and iſſue on the traverſe, *Brownl. Red.* 9, 10.

Plea, protesting for plea as to part, that plaintiff was indebted to defendant in one hundred and twenty pounds, and requested to pay I. for plaintiff three hundred and fifty-eight pounds; and at the same time plaintiff delivered to defendant part of the goods to sell, and money thereupon retained in part payment of the aforesaid four hundred and seventy-eight pounds; defendant sold the goods for three hundred and eighty-six pounds, which he retained; and as to the residue of the plea, foreign attachment, *Browne. Red.* 11.

Plea, as to part of the time, never was bailiff nor receiver; as to residue of the time, *plene computavit*, *Read's Dec.* 2.

Nunquam receiver for part; *plene computavit* for residue; replication, *non computavit*; and issue, *Cl. Ass.* 124.

Plea, that plaintiff discharged auditors from hearing the account; replication, *non*; and issue, *Hans.* 104. *Pl. Gen* 213.

Plea, infancy in account; replication, of full age, *Brown. V. M.* 465.

Plea, statute of Limitations; replication, that the account concerns trade, *Vidian*, 76.

Plea, and prays allowance of payment of money and expences, and allowance of surplus; plaintiff confesses *parat. est computare*; allowance as to the residue; says, that defendant did not pay nor deliver, &c. *prout, &c.*; and issue joined, 2. *Brown. Ent.* 40.

Plea, as to twenty-three pounds of one hundred pounds, he paid it; as to seventeen pounds thereupon, and as to sixty-three pounds residue, he paid A. by the appointment of plaintiff; replication, that he did not pay; and three several issues, *Brownl. Red.* 4.

Plea, that he paid money for the carriage *pannorum*; allowance thereon by plaintiff, *Brown's Ent.* 10.

Judgment, that defendant account; auditors assigned by the Court by the assent of plaintiff, who fix a day; defendant bailed, who at the day delivered an account to auditors, and prays allowance thereon, namely, money for clothes, meat, drink, bedding, and other things, requested, expended, and paid for plaintiff; replication, that defendant did not pay; and issue, 1. *Brown.* 115.

Similar; and auditors report to the Court, that the account is difficult; further day is given; auditors deliver an account as follows *in hæc verba, &c.*; defendant prays allowance of money paid and expended; replication, as to part, plaintiff allows it; as to residue, did not pay, 2. *Brown*, 38.

Account made and delivered into court, which follows *in hæc verba, &c.*; defendant admits money received, but pleads a general release; special demurrer, 1. *Brown's Ent.* 117.

On judgment to account, defendant renders himself, and is committed to the marshal; auditors are assigned, who fix a day; defendant bailed; auditors bring the account into court, *cujus tenor* follows *in hæc verba, &c.*; defendant pleads several payments, which he claims to be allowed; replication, *non solvit* as to all; and separate issues; *venire facias* awarded *de medietate linguæ*; verdict for plaintiff, *Robinson's Entries.* 1.6.

Confession of the action; auditors assigned; account delivered into court, by which defendant charges himself; monies received for goods sold; and claims to be allowed the same; plaintiff allows part, and disallows the other part; issue thereon; and for the residue defendant pleads, custom of merchants, an adventure on the loss; replication, protesting, &c.; traverses the custom; and issue, *Brownl. Red.* 9.

Defendant on a judgment to account is taken on a *capias* and committed to the Fleet; auditors assigned, who fix a day; bail for the defendant; account made and set out; defendant is convicted in one hundred pounds; bar, that he paid thirty-seven pounds thereof to plaintiff, and sixty-three pounds residue to A. by plaintiff's order; replication, that he did not pay; and issue; *venire facias* awarded, *Brownl. Red.* 3, 4.

Defendant

Defendant convicted in one hundred pounds received by the hands of G. one hundred pounds by the hands of T. and twenty pounds by the hands of I.; bar, that he paid seventy pounds to A. and T. and fifty pounds to P. by plaintiff's order; like plea for eleven pounds and six pounds; and to the residue, that plaintiff was indebted to I. in one hundred pounds, and I. was likewise indebted to defendant; and plaintiff and defendant agreed, that defendant should retain said one hundred pounds, which he retains by plaintiff's order; replication, that he did not pay said several sums, and as to one hundred pounds, he did not retain by plaintiff's order; and issue, *Robinson's Entries*, 117.

As to five pounds claimed by defendant for labour about the care and management of goods, auditors are respited until the issue between the parties be tried, *Brownl. Red.* 10.

Plea of *plene computavit* for part; confession of action for part; and to residue, *ne unques receiver*, *Cl. Ass.* 56. Judgment, that defendant account, *Ib.* 57.

Confession that defendant was plaintiff's bailiff, having the care and disposal of goods to trade in the count named; judgment to account; account made before auditors, *Cl. Ass.* 58.

Title of the account of guardian of profits of messuages, 1. *Brown. Ent.* 115.

The like of bailiff for goods received, 2. *Brown. Ent.* 39.

And of receiver *for a time* of monies received, *Robinson's Ent.* 116.

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